92-1219

Supreme Court, U.S.
FILED
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No. 92-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

WILLIAM LEIGHTON,

Petitioner,

versus

THE DREXEL BURNHAM LAMBERT GROUP, INC. *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WILLIAM LEIGHTON
Petitioner
249 West 11th Street
New York, N.Y. 10014
(212) 255-0001

December, 1992

Questions Presented

(Rule 14.1(a))

1. Whether the order of the court of appeals for the Second Circuit dated September 17, 1992 should not be summarily vacated for being ultra vires, arbitrary, capricious, in violation of due process of law, and issued upon the motion of attorneys without standing to seek it.

2. Whether Lester L. Levy Esq., and his law partner, Stanley Nemser, Esq. should not be disciplined and sanctioned as provided by Rule 8.2 of this Court for having obstructed the course of justice in this Court in No. 87-304, October Term, 1987, William Leighton v. Beatrice Companies, Inc. et al., which is one of the causes for the Drexel bankruptcy.

List of Parties to the proceeding in the court of appeals

(Rule 14.1(b))

(See also the Amended Notice of Appeal, R.6a-8a).

1. Resolution Trust Corporation/Federal Deposit Insurance Corporation, by Thomas D. Barr, Esq.

2. Subclass A Claimants' Representative by Melvyn I. Weiss, Esq.

3. Drexel Burnham Lambert, Group, Inc., Debtor, and its subsidiaries, by Ira M. Millstein, Esq.

4. Securities and Exchange Commission, by Barry R. Goldsmith, Esq.

5. Subclass B Claimants' Representative by David Berger, Esq. and Stanley Nemser, Esq.

The subsidiary companies affiliated with the Debtor are :

Drexel Burnham Lambert Trading

Corporation; Drexel Burnham Lambert Trading Finance, Inc.; Drexel Burnham Lambert, Incorporated; BRR Incorporated; Deauville United Corporation; Double Oil and Gas, Incorporated; Drexel Burnham Lambert (Asia), Inc.; Drexel Burnham Lambert Capital Group, Inc.; Drexel Burnham Lambert Caribe International, Incorporated; Drexel Burnham Lambert Commercial Paper, Incorporated; Drexel Burnham Lambert International, Inc.; Drexel Burnham Lambert Investors, Corp.; Drexel Burnham Lambert MBI Corp.; Drexel Burnham Lambert Products Corp.; Drexel Investment Holdings, Inc.; Drexel Burnham Lambert Government Securities, Inc.; Drexel Burnham Lambert Realty Corp.; First DBL Corporation.

Contents of Petition

(Rule 14.1(c))

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Official and unofficial reports of opinions below

(Rule 14.1(d))

The district court's decision on the May 3, 1991 settlement is reported at 130 B.R. 910. The opinion of the court of appeals on the appeal of certain claimants from that decision of the district court is reported at 960 F. 2d 285. There have been no other reported decisions by the courts below.

Statement of the Grounds upon which the jurisdiction of this Court is invoked

(Rule 14.1(e))

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254(1) and 2106.

Constitutional provisions, statutes, rules and decisions

(Rule 14.1(f))

28 U.S.C. Sec. 1254(1):

Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C. Section 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree or order, or require such further proceedings to be had as may be just under the circumstances.

28 U.S.C. Sec. 158. Appeals

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section. (emphasis supplied).

Supreme Court Rule 8.

Disbarment and Disciplinary Action

* * * .2. The Court may, after

reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule of the Court.

F.R.App. Proc. 38. Damages for Delay

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Cases cited

Braley v. Campbell, 832 F. 2d 1504 (10th Cir., 1987)

Daily Income Fund, Inc. v. Fox, 464 U.S. (1984)

Marino v. Ortiz, 484 U.S. 301 (1987)

In re Sonnax Industries, 907 F.2d 1280 (2nd Cir., 1990)

United States v. Richardson, 418 U.S.166

Warth v. Seldin, 422 U.S. 490, (1975)

Weiss v. Temporary Investment Fund, Inc. 465 U.S. 1001 (1984)

Statement of the Case

(Rule 14.1(g)

Petitioner is claimholder No. 6532 and 6557 in the Drexel bankruptcy. The claims were filed before the bar date, November 15, 1990 and are set out in full in the appendix, R.135a ff. and R. 145a ff. No issue with respect to the merits of these claims is presented for review.

Tne Drexel bankruptcy is the result of Drexel's guilty plea, on September 19, 1989, to four counts of securities fraud and to two counts of mail fraud for which Drexel was sentenced to pay a total of $300,196,770.97 in fines and criminal penalties. The courts below have not taken judicial notice of this guilty plea and sentence. For example, in an opinion dated March 27, 1992, 960 F.2d 285, the court of appeals stated :

"The events causing the demise of Drexel are well-documented and need not be recounted here." Similarly, the district court's decision made no mention whatever of Drexel's guilty plea and sentence, R.85a.

In August, 1991, the district court (the Hon. Milton Pollack, Senior U.S.D.J.) held a hearing, jointly with the Bankruptcy Judge, (the Hon. Francis G. Conrad) on the proposed Securities Litigation Claims Settlement Agreement dated May 3, 1991 which it had "preliminarily" (i.e. ex parte) approved previously. After the hearing, a decision with consolidated findings of fact and conclusions of law was filed on August 20, 1991, R. 85a-135a, 130 B.R. 910 (1992). The decision did not articulate the jurisdictional basis of the district court's action. See below under Rule 14.1(i)).

In its decision, the district court specifically held that petitioner William Leighton had standing to object, R. 115a. The court also found that Michael Milken had no standing to object and that he had withdrawn his objection, R. 115a. The court divided the claims between Subclass A and Subclass B, noting that $607.5 million would be available to satisfy the claims of Subclass A and $202.5 million to Subclass B. R. 125a. This allocation was also noted by the appellate court, R.18a (see below). Neither court had judicially noticed that Milken was then serving a ten year sentence upon his plea of guilty to five securities violations. (In August, 1992, the sentence has been reduced to two years).

An appeal was taken by certain

parties aggrieved by the August 20, 1991 decision. Citing In re Sonnax Industries, Inc., 907 F.2d 1280 (2nd Cir., 1990). the appellate court overruled the Debtors' motion to dismiss for want of appellate jurisdiction, R.20a ff. and proceeded on a jurisdictional basis not approved by this Court, The entire decision will be found in the appendix, R. 9a-44a.

While the matter was pending before the appellate court, the district court held yet another hearing on a motion to add some 200 individuals, including Michael Milken, and some 600 partnerships and corporations owned or created by these individuals as "Identified Settling Parties". These persons and entities were not required to, and did not, intervene. They were not represented by counsel. Their names were added by the district court's

orders Nos. 20 and 31, filed on March 10 and April 29, 1992, respectively. These are the orders appealed from, R.6a-8a. The Identified Settling Parties allegedly committed $1,300,000,000.00 to the settlement. Most of that sum was allegedly contributed by Milken. No discovery was undertaken with respect to this contribution and the district court specifically restrained those persons who knew the source of that contribution, see Order No. 24, R. 72a-77a.

The "Identified Settling Parties" had not come forward until some six months after the district court's August 9, 1991 hearing on the settlement. This could be due to the fact that in October, 1991, their wrongdoing was described, in part, in a book by James B. Stewart entitled Den of Thieves. published by Simon & Schuster. An

excerpt on two full pages was published in The Wall Street Journal. Den of Thieves became a best seller and stayed on the best seller lists for about one year. Den of Thieves placed in the public record Milken's activities at Drexel's High Yield Bond Department at Beverly Hills, California and some of the deals that enriched him beyond belief. By making a contribution to the settlement of the Drexel bankruptcy, Milken sought to have his 10-year prison sentence reduced. In August, 1992, his sentence was reduced to two years, with a period of probation of three years to begin upon his release from prison, scheduled for March 1, 1993.

Before the Identified Settling Parties had come forward, petitioner's claims Nos. 6532 and 6557 were assigned to Subclass B. However, the $1.3 billion contribution by the Identified

Settling Parties was not allocated, in whole or in part, to Subclass B. It was allocated only to Subclass A. Therefore, assuming payment by Milken and his associates of the $1.3 billion, Subclass A would receive $1.9 billion and Subclass B would receive only $200 million.

Counsel for Subclass A is Melvyn I. Weiss, Esq. In 1984, Mr. Weiss was a petitioner in this Court as custodian for Gary Michael Weiss, see Melvyn I. Weiss, etc. v. Temporary Investment Fund, Inc., et al., 465 U.S. 1001 (1983). In that case, Mr. Weiss was represented by one of his law partners.

Co-counsel for Subclass B are David Berger, Esq. and Stanley Nemser, Esq. Mr. Nemser is the law partner of Lester L. Levy, Esq. who was lead counsel for the respondents-plaintiffs in the Beatrice case before this Court, please

see No. 87-304, October Term, 1987. Neither Drexel, nor Milken, nor any of the Identified Settling Parties were parties to the Beatrice litigation.

Meanwhile, the Judicial Panel for Multidistrict Litigation transferred to the district judge several actions that had been brought against Michael Milken and some of his associates in courts throughout the country. These were consolidated under Docket No. MDL 924, S.D.N.Y. However, these actions were not consolidated with, nor deemed related to, the Drexel bankruptcy even though the defendants, or some of them, were the same as the Identified Settling Parties in the bankruptcy. Messrs Weiss, Berger and Nemser were again appointed counsel for the plaintiffs and obtained an order from the district judge "preliminarily", i.e. ex parte, approving a settlement of MDL 924. At a

hearing on November 17, 1992, the district judge reserved decision on a motion by Messrs Weiss, Berger and Nemser to approve a "global settlement" of the claims against Milken et al. Petitioner orally submitted to the district judge that a federal court should not entertain the settlement offer of a Den of Thieves where no discovery of the profits realized by those in the den had been made. The notice with respect to the settlement of MDL 924 stated :

> This Notice is intended to inform all interested persons of important developments concerning the treatment of certain claims against Michael R. Milken ("Milken") and/or other employees of, and entities related to, Drexel Burnham Lambert Incorporated ("Drexel"). If you have a claim or are a member of one or more of the classes described below, you should carefully read this

notice."

In February, 1992, concurrently with MDL 924, Messrs Berger and Nemser started another lawsuit before the same district judge, Presidential Life Insurance Company v. Michael R. Milken et al., 92 Civ. 1151 (MP), hereinafter "Presidential". The complaint, on some seventy pages, alleged a variety of securities law violations on the part of Milken et al. and violations of the securities laws of practically every State of the United States. One month later, the suit was "settled" and a notice was published in the financial media addressed to readers who

> believe that they or members of their families have a claim against Michael R. Milken or other former employees of, or entities related in any way to, Drexel Burnham Lambert Incorporated. (Readers) should read this important notice carefully. (Readers') rights may be affected by

these legal proceedings, including the proposed settlement described below.

Presidential was not consolidated with the Drexel bankruptcy even though the Identified Settling Parties in the bankruptcy were named as defendants in Presidential. A settlement hearing was held by the district judge on July 14, 1992 and a judgment dismissing Presidential was entered on July 17.

Altogether, the district court held four hearings related to the same subject matter, (i) that of August 9, 1991 relating to the Drexel bankruptcy minus the contributions of the Identified Settling Parties, (ii) that of March 9, 1992 on those contributions totaling $1.3 billion, (iii) that of July 14, 1992 on the settlement of Presidential and (iv) that of November 17, 1992 on MDL 924.

Since petitioner could not have anticipated what the district court would or would not do with respect to Presidential and MDL 924, petitioner took an appeal from the orders finalizing the settlement of the Drexel bankruptcy. At issue were the rights of the classes on whose behalf Claims Nos. 9532 and 9557 had been filed by petitioner. On November 12, 1992, Subsequent to the taking of the appeals, the district court, on the motion of Messrs Berger and Nemser, struck the class allegations of these Claims and deprived thousands of unsuspecting shareholders of their rights, without notice or opportunity to be heard. By separate order entered on November 12, the district judge also refused to disqualify himself. This petition for certiorari does not seek review of the November 12 orders since these were not

before the court of appeals.

Prior to taking the appeal, petitioner sought leave to intervene in the bankruptcy proceeding. R.45a-58a. The district court denied this relief by handwritten order endorsed on the motion, R. 58a.

Rule 14.1(h)) is not applicable.

Basis for federal jurisdiction in the court of first instance

(Rule 14.1(i)

In an unusual arrangement, the district judge held a hearing jointly with the bankruptcy judge on August 9, 1991 on the settlement. The decision issued thereafter, R. 85a ff. did not specify the basis for the district court's jurisdiction.

On appeal by other aggrieved parties, the court of appeals held that the district court had properly withdrawn the securities claims from the bankruptcy court pursuant to 28 U.S.C. Sec. 157(d). However, the district court's decision did not examine these claims under the standards of the securities laws.

The appellate court's jurisdiction rests on its own interpretation of In re

Sonnax Industries, 907 F.2d 1280, R. 22a and not on 28 U.S.C. Sec. 158(d).

Argument

(Rule 14.1(j))

Point I. Petitioner had standing to take the appeal from the district court's denial of petitioner's motion to intervene

In its August 20, 1991, the district court held that petitioner had standing to object, R. 115a. Based on that holding and in order to avoid problems on appeal, petitioner sought leave to intervene, R.45a-58a, which the district court denied, R. 58a. The motion was based on the holding of this Court in Marino v. Ortiz, 484 U.S. 301 (1987). This Court then held that "denial of such a motion (is), of course, appealable", id. at 304. Neither the

district court, nor the court of appeals, explicated why Marino was not applicable.

To the extent that the court of appeals held that petitioner had no standing, its order should be summarily reversed with a direction that it consider Marino in the circumstances here present.

Point II. Petitioner had standing to take an appeal from the district court's final decision

The district court's August 20, 1991 decision was not the final decision in the Drexel bankruptcy. The final decision was made on April 29, 1992, R.78a-84a when some 200 individuals and some 600 partnerships and corporations were added as "Identified Settling Parties" to the judgment filed on March

10, 1992, R. 58a-70a.

Since these Identified Settling Parties were not intervenors in the bankruptcy, had not come forward in time for the August 9, 1991 settlement hearing and were beneficiaries of "release and injunction" provisions of the final decree, petitioner took the appeal for the purpose of bringing before the appellate court the matters pertinent to the bankruptcy.

Indeed, the appeal was fully briefed by petitioner and the Drexel debtors but these documents were disregarded by the court of appeals. Instead of proceeding on the basis of the certified record, the court of appeals relied on the self-serving affidavit of Stanley Nemser, Esq. as a basis for its determination that petitioner had no standing to take the appeal. The court of appeals

converted the proceeding before it from an appeal on the merits to oral argument on a motion filed by one who had no standing to do so in the first place.

No representative of the Drexel debtors or of the Identified Settling Parties appeared at that hearing and no papers were filed by them. The only person heard by the court of appeals in support of the motion was Mr. Nemser.

Point III. Certiorari should be granted because petitioner has no other avenue of review

F.R.App.Proc. 38 is applicable only to frivolous appeals. It is not applicable to an appeal filed by one whose standing to take it is being challenged by motion. For example, the appellant in United States v. Richardson, 418 U.S. 166, was found by this Court not to have had standing to

bring the action there involved. No sanctions were imposed upon Richardson and in favor of the United States

And in Warth v. Seldin, 422 U.S. 490, 502 (1975) this Court held that standing to sue must be assessed upon the standing of the named plaintiff and not upon the standing of unidentified class members.

Here, the court of appeals did not follow either Richardson or Warth for the purpose of analyzing the nature of the case. It did not hear the case on the merits as the Third Circuit had done in Richardson. It issued a broad injunction against petitioner creating more obstacles to the prosecution of Claims Nos. 6532 and 6557 that affect the legal rights of thousands of people. Since none of these persons had filed proofs of claim by the bar date,

November 15, 1990, it follows that the Subclass B claimants represented by Mr. Nemser have struck it rich.

The court of appeals ordered petitioner to pay $2,500 to "counsel for the appellees" without specifying the names of the recipients or their standing to seek that relief. Had it made such a specification, it would have had to determine that counsel had been entitled to seek the relief.

Evidently, the action of the court of appeals calls for review by this Court which has promulgated F.R.App. Proc.38, because petitioner has no other avenue of relief from the order of the court of appeals, R.1a-3a.

Since petitioner must anticipate the opposition of Mr. Nemser that certiorari be granted, it is apposite that the circumstances surrounding two grants of

certiorari in a recent securities case be recalled. In 1984, this Court granted certiorari and decided Daily Income Fund, Inc. et al. v. Fox,, 464 U.S. --- in the belief that it was then necessary to resolve a conflict between the Circuits. This has resulted in a sweeping decision which the Court followed in Weiss, etc. v. Temporary Investment Fund, Inc., 465 U.S. 1001.

Following that decision by this Court, Daily Income Fund did not proceed to trial on the merits. It was "settled" for some $200,000. "Settlement" of disputes between attorneys hardly calls for the grant of certiorari by this Court. But it happened in Daily Income Fund and in Temporary Investment Fund and is likely to happen again unless this Court takes action against those attorneys who do not disclose in their petition for

certiorari that their purpose in seeking the writ is to create leverage in "settlement" negotiations. Daily Income Fund was prosecuted by the law firm of Milberg Weiss Bershad Specthrie and Lerach of which Melvyn I. Weiss, Esq. the plaintiff in Temporary Investment Fund, is the senior partner. Mr. Weiss is counsel to the Ssubclass A Representatives in the case at bar.

Point IV. The obstruction of justice by certain respondents who were also respondents in No. 87-304 William Leighton v. Beatrice Companies, Inc.

In 1987, petitioner had petitioned this Court to grant certiorari in No. 87-304. The petition drew a joint response from fifteen attorneys and was finally decided in November, 1987.

Among the responding attorneys was

Lester L. Levy, Esq. who had been the plaintiffs' lead counsel in that litigation. Mr. Levy's law partner, Stanley Nemser, Esq. is co-counsel for the Subclass B claimants in the Drexel bankruptcy and has filed the motion which has resulted in the order of the the court of appeals here at issue.

Neither Drexel nor the Identified Settling Parties had been parties to the Beatrice litigation in Delaware. Their interest in the takeover of Beatrice by Kohlberg Kravis Roberts & Co. ("KKR") was to provide financing through the issuance of "junk bonds". The person responsible for marketing the junk bonds was Michael R. Milken, one of the Identified Settling Parties here. Without Milken's cooperation, the merger could not have been accomplished.

In connection with the merger,

Beatrice circulated a proxy statement to its shareholders. This document was issued jointly with the BCI Holdings prospectus that covered the newly issued BCI Preferred stock into which the Beatrice common stock was to be converted. The effective date of the merger was April 17, 1986. Prior to that date Beatrice common stock continued to be heavily traded on the New York Stock Exchange.

As plaintiffs' lead counsel, LESTER ~~Leon~~ L. Levy, Esq. had the responsibility (1) to review and comment on the proxy statement/prospectus as specifically provided by a memorandum of understanding signed by Beatrice and KKR, (2) to bring in, as parties, Drexel and the Identified Settling Parties for the purpose of providing them with releases from the claims asserted in the complaints and (3) to

engage in discovery with respect to Drexel's underwriting commitments relative to the junk bonds. Such discovery would have led to the conclusion that Drexel and Milken were then engaged in a massive securities and mail fraud to which Drexel pleaded guilty in 1989. Milken also pleaded guilty to several counts of securities fraud in 1989.

However, the presence of Drexel and Milken as parties in the Delaware litigation would have jeopardized the consummation of the merger and Mr. Levy's fee. Indeed, the proxy statement/prospectus disclosed that Beatrice had contracted "not to oppose" a $3,200,000.00 fee if awarded by the Delaware courts upon the application of plaintiffs' counsel, i.e. Mr. Levy.

Drexel and Milken wisely stayed away

from the Delaware litigation since they had sought and received warrants to purchase the common stock of BCI in addition to the underwriting fees for the junk bonds. On December 4, 1988, Barron's reported that the warrants were worth $850,000,000 and asserted that Drexel had not reported that sum as income in 1987.

When Drexel declared bankruptcy in May, 1990, the I.R.S. filed a huge claim against it but had to settle for a pittance. By the bar date for filing claims, petitioner filed Claims Nos. 6532 and 6557, R. 135a, 145a, in order to salvage what was left from the wreckage of Drexel's assets. The claims pertain only to Drexel's underwriting fees with respect to the junk bonds.

No claims were filed with respect to the warrants since these had been

distributed to the Identified Settling Parties which were not named as contributors to the Drexel estate until April 29, 1992.

When Mr. Levy joined in the 15-attorney response to the petition for certiorari in 87-304, he knew, or was presumed to know, of the warrant distribution to the Identified Settling Parties. He knew this from the prospectus which disclosed the fact in language that would have aroused the suspicion of any experienced securities lawyer. Nevertheless, he signed the brief in opposition to that petition for certiorari.

In short, Mr. Levy has obstructed the course of justice in No. 87-304 by joining in an opposition that was designed to and did cause this Court to deny certiorari. Would this Court have

denied certiorari if it had known that Drexel and Milken were then committing several serious securities crimes, that Mr. Levy had not engaged in the discovery necessary to reveal those crimes and that the Beatrice shareholders were about to be fleeced by the Identified Settling Parties ?

Wnen Mr. Nemser, Mr. Levy's law partner, consented that the Identified Settling Parties contribute $1,300,000,000 to the Drexel bankruptcy, he knew, or should have known, that this contribution was suspect and did not reflect these Parties' true liabilities to the estate. Mr. Nemser has not taken the deposition of any of these Parties. Even though he sued these Parties in Presidential, he did not take their deposition in that suit, either, and did not resort to any discovery device. Mr. Nemser did not take the deposition of

any of these Parties in MDL 924 which he settled for a fraction of the unknown liabilities of these Parties.

All of these settlements are designed to produce huge fees for Messrs Nemser and Levy aa Beatrice amply shows to be the case.

Conclusion

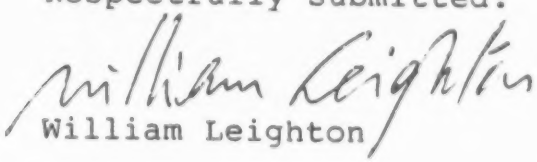
This Court does not sit to resolve issues of fact. Therefore, responsibility for making fact determinations rests with the lower courts, especially with the courts of appeals where the facts do not appear from the certified record. Here, the court of appeals has not made any findings of fact and, in the words of Rule 10.1.(a),

> it has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this

Court's power of supervision.

See also Braley v. Campbell, 832 F.2d 1504 (10th Cir;, 1987). For the above reasons, certiorari should be granted and the court of appeals' order of September 17, 1992 should be summarily vacated.

Respectfully submitted:



William Leighton

Petitioner

New York, New York
December, 1992

APPENDIX

(Rule 14.1(k)

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1992		
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Aug.13	Motion of Stanley Nemser to dismiss appeal	4a-5a
May 8	Petitioner's Amended Notice of Appeal	6a-8a
Mar.27	Opinion, U.S.C.A. 2d Cir., 960 F.2d 285 (1990)	9a-44a
Mar. 5	Petitioner's Notice of Motion to Intervene	45a-58a
Apr.16	Endorsement on motion Motion to Intervene in all respects denied - so ordered	58a

	Milton Pollack,	
	Senior U.S.D.J.	
Mar.10	Order No. 20,	58a-70a
	(dated March 9, 1992)	
	approving Settlement and	
	designating Identified	
	Settling Parties pursuant	
	to Joint Plan of	
	Reorganization	
Mar.23	Order No. 23	71a
	U.S.D.C., S.D.N.Y.	
Apr.3	Order No. 24	72a-77a
	U.S.D.C., S.D.N.Y.	
	and endorsement	
Apr.29	Order No. 31	78a-84a
	(dated April 24)	
	U.S.D.C., S.D.N.Y.	
	with Exhibit 'A'	

(continued)

1991	Order,130 B.R. 910	85a-135a
Aug.20	U.S.D.C., S.D.N.Y. Decision, Consolidated Findings of Fact and conclusions of Law,(excerpts)	
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Nov.13	Petitioner's Proof of Claim/Interest No. 6532	135a-144a
Nov.13	Petitioner's Proof of Claim/Interest No. 6557	145a-156a

RJM (SDNY 90-cv-6954 Pollack)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second circuit, held at the United States Courthouse in the City of New York, on the 17th day of September, one thousand nine hundred and ninety-two.

PRESENT :

HON. ROGER J. MINER,

HON. FRANK X. ALTIMARI,

HON. JOHN M. WALKER, JR.,

Circuit Judges.

IN RE THE DREXEL BURNHAM LAMBERT GROUP, INC., ET AL.

Appellees,

WILLIAM LEIGHTON,

Appellant.

ON CONSIDERATION of the appellees' motion to dismiss the appeal and for sanctions and injunctive relief, it is hereby

ORDERED, that the appeal be, and it hereby is, dismissed for appellant's lack of standing, and it is further

ORDERED, that the appellees' request for sanctions be, and it hereby is granted under the provisions of Fed. R. App. P. 38, and appellant is directed to pay to counsel for appellees the sum of $2,500, and it is further

ORDERED, that the clerk's office be, and it hereby is, instructed not to file any further papers from appellant in this Court until the sanctions have been paid, and it is further

ORDERED that appellant be, and he hereby is, enjoined from instituting any further actions or appeals in connection with any matter related to the matters subject of the captioned action without first seeking leave of this Court, and it is further

ORDERED, that the crossmotion of appellant for consolidation, extension of time and sanctions be, and it hereby is, denied.

/s/ Roger J. Miner,

/s/ Frank X. Altimari,

/s/ John M. Walker, Jr.,

Circuit Judges.

Filed, September 17, 1992, United States Court of Appeals for the Second Circuit, Elaine B. Goldsmith, Clerk.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 92-5042

NOTICE OF MOTION

for dismissal of appeal, sanctions, and injunctive relief

In re THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Appellees

WILLIAM LEIGHTON,

Appellant

---

* * *

Judge or Agency whose order is being appealed :

Hon. Milton Pollack, Senior U.S.D.J.

Brief statement of the relief requested :

1. Dismissal of appeal for lack of standing and meritless and frivolous

appeal.

2. Imposition of sanctions.

3. Order providing for limited injunctive relief against Appellant enjoining him in connection with judicial approvals of settlements and confirmation of plan of reorganization of Drexel, and until sanctions are paid.

By : (signature of counsel)

/s/ Stanley Nemser

Appearing for Subclass B

Representatives, Subclass B and

Other Claimants-Appellees

Date : August 13, 1992

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

THE DREXEL BURNHAM LAMBERT GROUP,et al.

90 Civ. 6954 (MP)

Chapter 11

Case No. 90 B 10421 (FGC)

v.

WILLIAM LEIGHTON,

Claimant, Objector,

and Applicant for Intervention.

AMENDED NOTICE OF APPEAL

Notice is given that William Leighton hereby appeals to the United States Court of Appeals from the Order of this Court, dated April 16, 1992 denying him leave to intervene in this action for the purpose of appealing the final decision of this Court in this

action.

Notice is further given that William Leighton hereby appeals to the United States Court of Appeals for the Second Circuit from the final decision herein consisting of (1) the Order No. 20 filed on March 10, 1992 Approving Settlement and Designating Identified Settling Parties Pursuant to the Joint Plan of Reorganization, (2) the Order No. 23 filed on March 23, 1992 amending the list of Identified Settling Parties determined by Order No. 20 and (3) the Order No. 31 filed on April 29, 1992 listing the Final Exhibit 'A' of Identified Settling Parties entitled to the benefits of the release and injunction provisions described in Sections 12.2 and 12.3 of the Second Amended and Restated Joint Plan of Reorganization for the Debtors under

Chapter 11 of the United States

Bankruptcy Code.

/s/William Leighton
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May 8, 1992

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OPINION, U.S.C.A., 960 F.2d 285 (1992)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

(Argued : January 27, 1992
Decided : March 27, 1992)

In re : The Drexel Burnham Lambert Group, Inc. et al.

Debtors.

SECURITIES AND EXCHANGE COMMISSION

Plaintiff-Appellee,

v.

THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Defendants-Appellees.

SECURITIES LITIGATION CLAIMANTS;

SUBCLASS A REPRESENTATIVES;

SUBCLASS B REPRESENTATIVES;

FEDERAL DEPOSIT INSURANCE CORPORATION;

RESOLUTION TRUST CORPORATION;

OFFICIAL CREDITORS COMMITTEE OF DREXEL BURNHAM LAMBERT GROUP, INC.:

OFFICIAL CREDITORS COMMITTEE OF DREXEL BURNHAM LAMBERT INCORPORATED;
OFFICIAL CREDITORS COMMITTEE OF DREXEL BURNHAM LAMBERT TRADING CORPORATION;
EQUITY COMMITTEE OF THE DREXEL BURNHAM LAMBERT GROUP, INC.;

Appellees,

HART HOLDING COMPANY, INC.;
REEVES INDUSTRIES, INC.;
LIGGETT GROUP INC.; LIQUID GREEN TRUST;
WILLIAM FRIES, II, JOHN LIPPITT;
JACQUELYN TRIBOLET; WILLIAM NELSON HARRIS, on behalf of themselves and all members of the Pacific Lumber Company shareholder plaintiff class;
CITIBANK; DEN DANSKE BANK; LLOYDS BANK P.L.C.; CANADIAN IMPERIAL BANK OF COMMERCE,

Appellants.

Before :

ALTIMARI, WALKER and McLAUGHLIN,

Circuit Judges.

Appeal from an order of the United States District Court for the Southern District of New York (Pollack, J.) certifying class and subclasses for settlement purposes, and approving settlement agreement. Held: the district Court did not err in certifying the class and subclasses, and in approving settlement agreement.

Affirmed.

(Names of attorneys and
their affiliation are omitted)

McLAUGHLIN, Circuit Judge:

Appellants are three members of a proposed class of plaintiffs that have asserted claims against defendants,

appellees Drexel Burnham Lambert Group, Inc. and its subsidiaries (collectively "Drexel"). Appellants ask us to reverse an order entered in the United States District Court for the Southern District of New York (Milton Pollack, Senior District Judge) certifying the proposed class and two subclasses, and approving a settlement agreement (the "Settlement Agreement") of the class' claims. We find that the district Court did not err in certifying the class and subclasses and in approving the Settlement Agreement, and therefore affirm.

BACKGROUND

The events causing the demise of Drexel are well-documented, and need not be recounted here. We summarize only the facts that are necessary to understand the dispute before us.

In September 1988, the Securities

and Exchange Commission ("SEC") filed a civil enforcement action against Drexel and several of its top ranking officials, alleging that Drexel had violated federal law in various securities transactions. After intense negotiations, Drexel agreed to create a $350 million fund to be administered by the SEC (the "SEC Fund") in exchange for dismissal of the complaint. The SEC was to distribute the Fund to the victims of Drexel's illegal transactions in "junk bonds".

Drexeel paid $200 million into the SEC Fund in September 1989, and agreed to pay the remaining $150 million in two installments over the next three years. However, in February 1990, (before Drexel had paid any of the remaining $150 million), Drexel filed a petition for relief under 11 U.S.C. Sec. 1101 et

seq., in Bankruptcy Court for the Southern District of New York. The SEC immediately filed a bankruptcy claim for the remaining $150 million Drexel owed the SEC Fund. Many other potential claimants followed suit, and by November 1990, over 15,000 bankruptcy claims had been filed against Drexel. Among these claims, 850 arose out of Drexel's actions in buying, selling and underwriting securities (the "Securities Claims").

To facilitate settlement, Judge Pollack withdrew the Securities Claims from the bankruptcy Court pursuant to 28 U.S.C. Sec. 157(d).[1/] Early attempts to settle each claim individually proved fruitless. Thus, the district Court ordered the establishment of the Securities Litigation Claimants Group ("SLCG") comprising the Federal Deposit

Insurance Corporation ("FDIC"), the Resolution Trust Corporation ("RTC") and two groups of claimants in other securities related actions against Drexel. One group consists of claimants in various derivative suits brought against Drexel (the "Derivative Plaintiffs"). The other group consists of claimants who brought actions against Drexel that were later consolidated

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1/ 28 U.S.C. Sec. 157(d) permits a district judge to "withdraw, in whole or in part, any case or proceeding . . . if the (district judge) determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regarding organizations or activities affecting interstate commerce." Because the Securities Claims necessitated an examination of federal securities laws, Judge Pollack properly withdrew those claims from the bankruptcy Court.

before Judge Pollack by the Panel on Multidistrict Litigation (the "Boesky Litigation Plaintiffs"). See In re Ivan F. Boesky Securities Litigation, MDL Dkt No. 732 (MP). The SLCG's mission was to negotiate with Drexel and Drexel's non-securities claimants (the "Fixed Creditors") to settle all claims against Drexel.

The parties negotiated throughout January and February. On February 18, 1991, the SLCG advised the district Court that the parties had agreed to the broad framework of a settlement. The parties then engaged in round-the-clock negotiations over the next three months to flesh out the terms of the settlement.

On May 3, 1991, the parties arrived at the Settlement Agreement at issue here, an agreement as intricate as it is

lengthy. It contains thirty-three single-spaced pages painstakingly describing the settlement method. The Agreement requires the 850 securities claimants to be certified as a mandatory, non-opt-out class, which in turn is divided into two subclasses. The principal members of subclass A include several failed banks currently administered by the FDIC or the RTC, and the Derivative Plaintiffs. Subclass B consists primarily of the Boesky Litigation Plaintiffs.

Under the Settlement Agreement, Drexel must pay the $150 million balance it owes the SEC Fund. The $350 million SEC Fund will then be divided between the subclasses, with subclass A receiving seventy-five percent ($262,5 million) and subclass B twenty-five percent ($87.5 million). The entire

class will also receive a share of Drexel's remaining assets (the "Class Assets") which will be divided between the subclasses in the same 75%-25% ratio as the SEC Fund. Subclass A's total recovery from the SEC Fund and the Class Assets is estimated at $600 million, while subclass B's total recovery is estimated at $200 million. Finally, the Settlement Agreement provides for subclass A and Drexel to "pool" their recovery from lawsuits they have brought against Drexel's former directors and officers (the "Pooled Recovery"). The Settlement Agreement does not contain any provision enabling subclass B to share in the Pooled Recovery, and enjoins members of subclass B from bringing any future actions against the directors and officers.

The district Court scheduled an August 9, 1991 hearing on the fairness of the Settlement Agreement. Notice of the hearing was sent to each of the securities claimants, and was published in six different newspapers throughout the United States. Only eight of the 850 proposed class members filed objections. After listening to their challenges, the district Court issued an order certifying the class and approving the Settlement Agreement.

Three of the eight objecting class members now appeal from the district Court's order. Appellants first contend that the district court erred in certifying the mandatory non-opt-out class and subclasses. Second, they maintain that the district court erroneously approved the Settlement Agreement. We reject both arguments and

thus affirm the order of the district Court.

DISCUSSION

1. Appealability

Drexel has moved to dismiss this appeal claiming that the district Court's order is not final. In support of its motion, Drexel points to the district Court's order, which states :

> By conclusively resolving the Securities Litigation Claims, the Settlement eliminates one of the most significant hurdles in the way of resolution of these chapter 11 cases. In the absence of the Settlement, there could be no (reorganization) Plan and indeed, no successful and prompt resolution of these chapter 11 cases. * * *
> (However, t)he Settlement, which sets forth the requisite elements to

> be contained in the (reorganization) Plan, does not "lock up" the terms of the Plan because * * * the Settlement is conditioned upon confirmation of the Plan * * *

In re Drexel Burnham Lambert Group, Inc. 130 B.R. 910, 926, 927 (S.D.N.Y.), "Drexel I" (emphasis added). Because the district Court acknowledged that the Settlement Agreement is "conditioned upon confirmation" of Drexel's reorganization plan, Drexel argues that the district Court's order approving the Settlement Agreement is not final. We disagree.

While Drexel's point might be well-taken in the ordinary realm of civil litigation, it must be emphasized that this appeal arises in a bankruptcy context. We have traditionally accorded a more flexible definition to concepts

of finality and appealability in bankruptcy cases. In re Sonnax Industries, Inc., 907 F. 2d 1280 (2d Cir., 1990). As we noted in Sonnax, a looser standard of appealability is necessary because :

> a bankruptcy proceeding is umbrella litigation often covering numerous actions that are related only by the debtor's status as a litigant and that often involve decisions that will be unreviewable if appellate jurisdiction exists only at the conclusion of the bankruptcy proceeding.

Id. at 1283 (citations omitted). We held in Sonnax that an order in a bankruptcy case is appealable if the order "finally disposes of (a) discrete dispute within the larger case." Id. (emphasis in original) (citations

omitted). There is no question that the order approving the Settlement Agreement addresses a "discrete dispute". As the district Court noted, the Settlement Agreement conclusively resolves the Securities claims. See Dexel I, 130 B.R. at 926. Our inquiry focuses on the first prong of the Sonnax test: whether the order "finally disposes" of the Securities Claims.

Under Sonnax, our determination of the finality of the district Court's order depends on whether appellants will have another chance to assert their objections to the Settlement Agreement. After careful scrutiny, we find that appellants will not have that second chance. They will be unable to participate further in Drexel's reorganization proceedings.

The bankruptcy code allows a

claimholder to participate in a debtor's reorganization plan if the claimholder's interests are "impaired" by the plan. 11 U.S.C. Sec. 1126(f). If the claimholder's interests are "unimpaired", the claimholder is "conclusively presumed to have accepted the plan," and his participation in or approval of the reorganization plan is not necessary for the plan to gain confirmation by the bankruptcy Court. Id. A claimholder's interests are "unimpaired" if the reorganization plan leaves unaltered, the legal, equitable, and contractual rights to which such claim or interest entitles the holder. * * *" Id., Sec. 1124(1).

Here, the district Court found that Drexel's reorganization would not alter or otherwise infringe the class members' rights, and that the Settlement

Agreement "establishe(d) the legal, equitable and contractual rights of al: (c)lass members" regarding Drexel. Drexel I, 130 B.R. at 928. Thus, the Court held that the class members were "unimpaired" within the meaning of 11 U.S.C. Sec. 1124(1). Accordingly, because appellants are "unimpaired" claimants, they will be unable to participate in Drexel's reorganization proceedings. It follows that the order approving the Settlement Agreement finally disposes of appellants' claims, and we may address appellants' objections to the Settlement Agreement.

II. Class Certification

In determining whether a class should be certified, a district Court must first consider each of the factors sets forth in Fed. R. Civ. P. 23(a) :

> (1) the class is no numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

If each element of Rule 23(a) is satisfied, the district Court must then determine whether class certification is appropriate under Fed. R. Civ. P. 23(b). We will overturn a district Court's decision to certify a class only if the district Court abused its discretion, e.g. Johnpoll v. Thornburgh, 898 F.2d 849, 852 (2d Cir. 1990). We hold that the district Court certified the class

in accordance with Rule 23(a) and (b), and thus affirm the class certification.

A. Rule 23(a)

1. Impracticability of Joinder

The proposed class is clearly so numerous that joinder is impracticable. The entire class comprises nearly 850 claimants dispersed throughout the United States. Subclass A consists of more than 600 claimants, while subclass B consists of over 160 claimants. Individual adjudication of each claim would take many years and would dramatically increase the legal expenses for all of the parties. Joinder of all claims into one proceeding would be expensive, time-consuming and logistically unfeasible. Thus, rule 23(a)(1) has been satisfied.

2. Common Questions of Law or Fact

As the district Court noted, there

are several questions that are common to each class and subclass member. Among these questions are:

> 1) whether Drexel is liable under federal or state securities laws for its role in buying, selling and underwriting securities to the putative class and subclasses;
>
> 2) whether the putative class and subclass members were damaged by Drexel's conduct;
>
> 3) the status of the putative class and subclass members' claims relative to the claims of Drexel's fixed Creditors.

See Drexel I, 130 B.R. at 919. there is nothing in the record to persuade us that these common questions do not exist. Accordingly, rule 23(a)(2) has been met.

3. Typicality

Rule 23(a)(3) is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability. See Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 562 (2d Cir. 1968), vacated on other grounds, 417 U.S. 156 (1974). Charles A. Wright et al., 7A Federal Practice & Procedure, Sec. 1764 at 243 (1986). Here, each class member's claim is based on Drexel's purported violation of securities laws. Each claim must be satisfied from a limited fund of assets. Members of the subclasses share an interest in establishing Drexel's liability for violations of federal and state law, and achieving the maximum amount of recovery for their particular subclass.

Despite this strong showing of typicality, appellant Liggett Group Inc. ("Liggett") challenges the district Court's finding. Liggett points out that it is ineligible to share in the distribution of the SEC Fund because its claims against Drexel do not arise from transactions involving junk bonds, but rather are based solely on Drexel's allegedly fraudulent sale of commercial paper to Liggett. Thus, Liggett argues that its claims are not typical of other members of subclass B, who may draw from both the SEC Fund and the class Assets. Essentially, Liggett fears that because it cannot share in the SEC Fund, it will obtain a lesser recovery than other members of subclass B. We find that Liggett's qualms are premature.

The Settlement Agreement earmarks twenty-five percent of both the SEC Fund

and the Class Assets for subclass B, as a whole. The Agreement does not require that each subclass member receive the same percentage as his fellow subclass members from the SEC Fund and the Class Assets. Indeed, the Agreement does not address the rights of individual subclass members. Moreover, the Settlement Agreement does not provide for immediate distribution of the subclass' recovery to individual subclass members. Actual distribution will occur only after Drexel's reorganization is completed, and will be supervised by the district Court. At that time, Liggett can seek a higher percentage of the class Assets to compensate for its inability to share in the SEC Fund. Accordingly, we reject Liggett's argument that the Settlement Agreement manifests lack of typicality

within the class.

4. Adequacy of Representation

Under Rule 23(a)(4), adequacy of representation is measured by two standards. First, class counsel must be "qualified, experienced and generally able" to conduct the litigation. Second, the class members must not have interests that are "antagonistic" to one another. See Eisen, 391 F.2d at 562. Appellants do not dispute that the first prong of the Eisen test has been met. They focus their attack on the second prong, arguing that their interests substantially conflict with the rest of subclass B. Again, we disagree.

Aside from LIggett's flawed argument that it will necessarily obtain a smaller recovery than other subclass B members, appellants have not offered any proof that their interests are

antagonistic to the remainder of subclass B. To the contrary, the record unequivocally indicates that all members of subclass B (including appellants) share a common interest in showing that Drexel violated federal and state securities laws. All members of subclass B similarly wish to obtain the highest possible recovery for that subclass. In the absence of a showing of a genuine conflict between appellants and subclass B, we reject appellants' argument that rule 23(a)(4) has not been satisfied.

B. Rule 23(b)

Having found that the prerequisites to a class action prescribed by Fed. R. Civ. P. 23(a) were present, the district Court then certified the class and subclasses under Fed. R. Civ. P. 23(b)(1)(B). We agree that this

certification is appropriate.

Rule 23(b)(1)(B) permits a class action to be maintained if a congeries of individual actions would "impair or impede" the interests of other members of the putative class. See Robertson v. National Basketball Association, 556 F.2d 682, 685 (2d Cir. 1977). This test is met here. Drexel's assets to satisfy the Securities claims are finite. A succession of individual actions to determine Drexel's liability on each claim would involve costly litigation, thereby depleting Drexel's already limited resources. The diminution of Drexel's estate from protracted litigation would doubtless reduce the amount ultimately recovered by each member of the putative class.

We recognize that the limited fund here is quite different from the limited

fund present in most class actions under Rule 23(b)(1)(B). Because Drexel is in bankruptcy, its assets will not be distributed on the "first come, first served" basis that usually warrants class treatment under Rule 23(b)(1)(B). See Wright, Sec. 1774 at 441-443. Accordingly, a mandatory class action will not be appropriate in most bankruptcy cases. However, even though Drexel's assets will not be distributed to claimants until final approval of Drexel's reorganization plan, some members of the putative class might attempt to maintain costly individual actions in the hope and, perhaps, the belief that their claims are more meritorious than the claims of other class members. A mandatory class action under Rule 23(b)(1)(B) is thus necessary here to prevent claimants with such

motivations from unfairly diminishing the eventual recovery of other class members.

For the same reasons that we find that the class can be maintained under Rule 23(b)(1)(B), we hold that the district Court did not abuse its discretion in prohibiting any member of the putative class to opt out of the class. To allow a class member to opt out would involve costly litigation to estimate the amount of that member's claim, thereby reducing Drexel's already limited fund of assets.

We are not unaware of the Supreme Court's statement in Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985), that "due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an 'opt

out' or 'request for exclusion' form to the Court." Id. at 812. Shutts mandates that a plaintiff be permitted to opt out of a proposed class when the Court does not have personal jurisdiction over the plaintiff. Id. at 811-812. Here, appellants have already submitted to the Court's jurisdiction by filing claims against Drexel. Because there is no question that the Court has jurisdiction over appellants, Shutts is inapposite. Thus, the district Court did not abuse its discretion in denying appellants the opportunity to opt out of the class.

III. Approval of the Settlement Agreement

We will ordinarily defer to a district Court's approval of a class action settlement unless there is a "clear showing" that the district Court

abused its discretion. E.g. TBK Partners, Ltd. v. Western Union Corp., 675 F.2d 456, 463 (2d Cir. 1982); City of Detroit v. Grinnell Corp., 495 F.2d 448, 454-55 (2d Cir. 1974). However, where, as here, the district Court simultaneously certifies a class and approves a settlement of the action, we will more rigorously scrutinize the district Court's analysis of the fairness, reasonableness and adequacy of both the negotiation process and the proposed settlement. Weinberger v. Kendrick, 698 F.2d 61, 73-74 (2d Cir 1982), cert. denied, 464 U.S. 818 (1983).

The district Court must consider many factors, including the complexity of the ltigation, comparison of the proposed settlement with the likely result of litigation, experience of

class counsel, scope of discovery preceding settlement, and the ability of the defendant to satisfy a greater judgment. Id.; see also Grinnell, 495 F.2d at 463. We conclude that the district Court correctly held that these factors warranted approval of the settlement agreement.

This is a complex case. There are many plaintiffs trying to maximize their own recovery, and there is a defendant with a limited fund to satisfy all claims. Prolonging the negotiation process will increase Drexel's litigation costs, with a consequent decrease in the size of the fund. Class counsel are amply experienced in complex securities cases, and have analyzed countless documents and depositions to determine the amount of Drexel's assets and the strength of the class' claims.

The negotiation process involved lengthy arms-length discussions between the class counsel, Drexel, and Drexel's fixed Creditors. The district Court extensively supervised the negotiations. Finally, it is doubtful that Drexel could withstand greater exposure than that already enumerated in the Settlement Agreement. Accordingly, we believe that the Weinberger test has been met.

We need not toil over appellants' argument that their absence from the negotiations irreparably tainted the settlement process. Had the district Court permitted each securities claimant to take part in the negotiations, it is unlikely that any agreement at all could have been reached. We will defer to the district Court's management of the case, particularly because the district judge

has had substantial experience in supervising complex securities cases. He has presided over both the SEC action against Drexel, and other cases involving Drexel and its former officers and directors. He knows the difficulties the class has had in proving its claims, and is aware of Drexel's financial straits. Thus, we will not second guess his decision to allow the SLCG alone to negotiate with Drexel.

Finally, appellants argue that the district Court should have stricken the provisions of the Settlement Agreement that (a) enjoin subclass B from bringing any future actions against Drexel's directors and officers, and (b) allow only subclass A and Drexel to share in the Pooled Recovery. Again we are not persuaded.

In bankruptcy cases, a Court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan. See In re: A.H. Robins Co., 880 F.2d 694, 701 (4th Cir.), cert. denied, 493 U.S. 959 (1989). The Settlement Agreement is unquestionably an essential element of Drexel's ultimate reorganization. In turn, the injunction is a key component of the Settlement Agreement. As the district Court noted, the injunction limits the number of lawsuits that may be brought against Drexel's former directors and officers. This enables the directors and officers to settle these suits without fear that future suits will be filed. Without the injunction, the directors and officers would be less likely to settle. Thus,

we hold that the district Court did not abuse its discretion in approving the injunction.

We reject appellants' argument that they should be permitted to share in the Pooled Recovery. When approving a settlement of a class action, a district judge need not ensure that the defendant designate a particular source of its assets to satisfy the class' claims. Rather, the district Court need only examine whether the amount recovered by the class was fair in light of the Weinberger and Grinnell factors that we have already discussed. Because we find that these factors have been satisfied, we hold that the district Court did not err in denying appellants' request to share in the Pooled Recovery.

CONCLUSION

The district Court properly certified the mandatory non-opt-out class and subclasses in accordance with Fed. R. Civ. P. 23(a) and correctly allowed the class action to be maintained under Fed. R. Civ. P. 23(b)(1)(B). The negotiation process leading to the Settlement Agreement was fair. The Settlement Agreement reflects the substantial efforts of all parties involved, and reasonably balances the competing interests of the parties. Accordingly, we hold that the district Court did not err in certifying the mandatory non-opt-out class and subclasses, and in approving the Settlement Agreement.

AFFIRMED.

Filed : March 26, 1992,

U.S.D.C., S.D.N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

90 Civ. 6954 (MP),

Case No. 90 B 10421 (FGC),

Chapter 11, Jointly administered

William Leighton,

Claimant, Objector. and Applicant for Intervention

NOTICE OF MOTION

Sirs :

Please take notice that at 2 P.M. on April 10, 1992, in Room 1305, U.S. Courthouse, Foley Square, New York, N.Y., the undersigned Claimant and

Objector will move this Court (the Hon. Milton Pollack, Senior U.S.D.J.) for leave to intervene in this action for the purpose of appealing the final decision of this Court consisting of the Decision and Order of August 20, 1991, as amended, [1/] and the Order of March 9, 1992, as subsequently amended. The reason for this application is the decision in Marino v. Ortiz, 484 U.S. 301 (1982).[2/] In support of this application, applicant states :

1. On March 10, 1992, Order No. 20 was entered on the docket "Approving Settlement and Designating Identified Settling Parties pursuant to the Joint Plan of Reorganization". As recited therein, the Debtors, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation and Milberg Weiss Bershad Specthrie and Lerach

(collectively,the "Pool Administrators") had jointly moved this Court by oral motion made in open Court ("Joint Motion") on February 14, 1991 (sic).

This procedure has violated the rights to Due Process of Law of those affected by the Joint Motion, i.e. the Drexel creditors, among whom are the persons covered by Claims Nos. 6557 and 6532.[3/] The Pool Administrators have not given this claimant [4/] notice of their intention to present the Joint Motion as required by Civil Rule 3 of this Court, (implementing F.R.Civ.P. 7(b)(1)). Nor did the Order of February 14, 1992, giving Notice of the Hearing on the Joint Motion, recite any reasons why the Court had not proceeded as required by Civil Rule 3. The Pool Administrators have not given the

objectors notice of the settlement of an order upon the Court's oral decision made at about 4 P.M. on March 9, 1992.

2. The Executive Committee for Subclass B Allocation and Administration which was appointed by this Court's Order No. 6 of July 18, 1991, has not joined in the Joint Motion. The Executive Committee has not filed written objections or a statement of position with respect to the Joint Motion. Nor has the Committee participated in the drafting of Order No. 20. This constitutes inadequate representation of Subclass B. For want of adequate representation, the Subclass B claimants have been excluded from the $1.3 billion benefit conferred upon Subclass A by Order No. 20. The Subclass B claimants have not received any consideration in exchange for releasing

the Identified Settling Parties from

> any and all claims, obligations, rights, causes of action and liabilities which the Debtors, the Pool Administrators and any holder of a Claim against or Equity Interest in the Debtors have asserted or may be entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part upon any act or omission or other occurrence that has taken place on or prior to the Consummation Date of the Plan in any way relating to the Debtors, * * *

3. The "Identified Settling Parties" listed on Exhibit A to Order No. 20 have not complied with Bankruptcy Rules 7019, 7020, 7021 and 7024, hence they cannot be deemed to be "Controlled Entities". Only persons, partnerships and corporations that are subject to the jurisdiction of the Court can be deemed to be "Controlled Entities". Sections 12.2 and 12.3 of the Second Amended and Restated Joint Plan of Reorganization by the Debtors do not and

cannot supersede the said Bankruptcy Rules 7019, 7020, 7021 and 7024.

The Debtors should have filed the Joint Motion in Bankruptcy Court in connection with their application for the confirmation of the Second Plan. That would have brought before the Bankruptcy Court the issue whether Sections 12.2 and 12.3 of the Second Plan may preempt Bankruptcy Rules 7019, 7020, 7021 and 7024.

4. Order No. 20 will become final on or after April 24, 1992 provided Drexel files with the Court a definitive list of all Controlled Entities.

At the confirmation hearing before the Bankruptcy Court on March 5, 1992, the Debtors have presented their Second Amended and Restated Joint Plan of Reorganization and it is that Second Plan which has received the Bankruptcy

Court's approval. The preamble to Order No. 20 recites the First Plan as the basis for its issuance. 5/

5. Richard A. Bergman, Robert Davidow, Frederick McCarthy, BCI Equity Associates, L.P., BCI Capital Partners, a California L.P., BCI Capital Partners, L.P., BCI Capital Partners II, L.P., Macpherson Investment Partners, Macpherson Management Associates, Michael Milken, and possibly others, are scheduled to be beneficiaries of the release and injunction provision of Order No. 20. Drexel, Macpherson and Milken, as well as partnerships associated with or controlled by them, are scheduled to be deposed in a pending case in this Court, Forstmann Leff Associates et al. v. American Brands, Inc. et al., No. 88 Civ. 4485 JMC, (the "Forstmann" case).

1/ Claimant's application for the certification of this order pursuant to 28 U.S.C. 1292(b) was denied by the Order of this Court on September 16, 1991. Accordingly, no interlocutory appeal was taken.

2/ Prior to Marino, objectors seeking appellate review of a settlement were not required to intervene for that purpose, see e.g. Weinberger v. Kendrick, 698 F. 2d 61, cert. denied, 464 U.S. 818 (1983).

3/ See proposed complaint in intervention.

4/ This Court's decision of August 20, 1991 has specifically determined that this claimant had properly objected to the settlement per se and had standing to do so, see Finding No. 50.

5/ The difference between the First and the Second Plans has been outlined in a ten-page, single-spaced "Technical Amendments Agreement" submittted to the Bankruptcy Court under cover of the affidavit of Richard J. Wright, sworn to on March 4, 1992.

Evidence with respect to the findings and determinations of the Forstmann Court has been submitted as Exhibits 'M' and 'Q' to this claimant's notice of objections to the Joint Motion.

6. The Forstmann case was filed in this Court in June, 1988 by Weil Gotshal and Manges on behalf of some twenty-six "sophisticated" plaintiffs who, on Drexel's and Milken's advice. had bought some $781,000,000 worth of E-II "junk" bonds based on E-II's prospectus of July 2, 1987. Drexel was the sole underwriter named on that prospectus. Also on Drexel and Milken's advice these plaintiffs have not sold their bonds into American Brands, Inc.'s tender offer of January 25, 1988. Weil Gotshal has not named Drexel and Milken as defendants in the Forstmann case and has not asserted any claims under Section 11 of the Securities Act of 1933. In June, 1988 the one-year statute of limitations with respect to a cause of action under Section 11 had not expired.

On March 1, 1991, the E-II bonds

went into default and are now worthless.

7. On October 29, 1990, Weil Gotshal has filed the instant action in this Court, and a motion pursuant to 28 U.S.C. 157(d) to withdraw the reference from the bankruptcy Court "of federal securities and RICO claims and related proceedings", Exhibit 'N'. No disclosure was then made of the pending Forstmann case and of Weil Gotshal's interest in it. No proofs of claim were filed by Weil Gotshal on behalf of the Forstmann plaintiffs. Tne time to file such proofs has expired on November 15, 1990.

8. The affidavit of Richard J. Davis in support of the Joint Motion did not disclose Weil Gotshal's interest in protecting Drexel, Milken, Macpherson, the BCI partnerships and the individual managing partners (Bergman, Davidow and McCarthy) from being held liable to the

Forstmann plaintiffs. As a result, the stockholders of American Brands, Inc. may end up with a $781,000,000 judgment against their equity, for failure of the Forstmann plaintiffs (a) to join indispensable parties, (b) to file proofs of claim in this proceeding and (c) to timely assert Section 11 claims.

The release and injunction provisions of Order No. 20 would accomplish this result. For this reason, Order No. 20 in its final form should be appealed by those who are going to be adversely affected and aggrieved by it.

9. Order No. 20 grants "in all respects" the relief sought by the Joint Motion. This includes the injunction sought

> against any Holder of a Claim or Equity Interest, among other Persons, from the commencement or continuation of any suit, action or proceeding * * * against or

> affecting any Identified Settling Parties, including the Persons listed on Schedules A and B below
> * * *

This is contrary to Bankruptcy Rule 7065(d) which in terms prohibits the issuance of an injunction by reference to another document and without notice to those enjoined. Order No. 20 recites that "the Court (has) determined that no other notice of the entry of this Order need be given". (p.4). Whether or not this procedure complies with Rule 7065(d) is an issue that should be resolved on appeal from the Global Settlement, i.e. the final decision to be entered herein as soon as the Debtors shall have filed with the Court the list of all Controlled Entities, i.e. all Settling Participants who have executed and delivered definitive Global Settlement

documentation to the Pool Administrators.

10. The Order of August 20, 1991 approving the Settlement, the mandatory non-opt-out classes and the SEC Amended Plan of Distribution of the Disgorgement (Drexel) Fund has not yet been reviewed by the appellate Court on the appeals now pending. This claimant has filed objections to the entry of that order which objections could be reviewed by an appellate Court on appeal from a final decision. 28 U.S.C. 1291. This is an additional reason why intervention should be granted.

A proposed complaint in intervention and a memorandum of points and authorities are submitted herewith.

Respectfully submitted :

New York, N.Y. William Leighton
March 25, 1992 Claimant and Objector

cc : Thomas D. Barr, Esq.
Barry R. Goldsmith, Esq.
Melvyn I. Weiss, Esq.
David Berger, Esq.
Ira M. Millstein, Esq.
Stanley Nemser, Esq.

ENDORSEMENT

Motion to intervene is in all respects denied. So ordered.

4/16/92 Milton Pollack, Senior U.S.D.J.

FILED March 10, 1992
U.S. District Court, S.D.N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In re

THE DREXEL BURNHAM LAMBERT GROUP, INC.

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90 Civ. 6954 (MP)

Chapter 11 Case No. 90 B 10421 (FGC)

Jointly Administered

ORDER No. 20

ORDER APPROVING SETTLEMENT AND DESIGNATING IDENTIFIED SETTLING PARTIES PURSUANT TO THE JOINT PLAN OF REORGANIZATION

The above-named Debtors and the Federal Deposit Insurance corporation, the Resolution Trust Corporation and Milberg Weiss Bershad Specthrie and Lerach (collectively, the "Pool Administrators"), having jointly moved this Court by oral motion made in open Court ("Joint Motion") on February 14, 1991, (sic) for the entry of an order setting a hearing date to consider the (a) approval of compromises and settlements described to the Court as part of the Joint Motion, as fair and reasonable, pursuant to rule 9019 of the Federal Rules of Bankruptcy Procedure and other applicable statutes and

governing law, and (b) designation of certain persons and entities as "Identified Settling Parties" as that term is utilized and defined in the First amended and Restated Joint Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code, dated and filed with the United States Bankruptcy Court for the Southern District of New York on December 20, 1991 ("the Plan")[1/]; and the Court having considered the Joint Motion and the preliminary views of the moving parties, counsel for Michael Milken, counsel representing other Persons that are parties to the settlement and representatives of

---

1/ Unless otherwise defined, all capitalized terms used in this order shall have the same meanings herein that they have in the Plan.

the United States Securities and Exchange Commission, with respect to the distribution of the disgorgement Fund established in SEC v. Milken; and the Court being familiar with the Plan, the proposed settlement, the compromises and settlements reflected in the Claims Agreement, and other relevant factors affecting these Chapter 11 cases; and the Court having determined, for good cause shown, that a hearing should be held to consider the Joint Motion and the settlement described in the Joint Motion and in that certain "Notice of Hearing Pursuant to Sections 12.2 and 12.3 of the Joint Plan of Reorganization to Consider Motion to Approve Settlement and Designate Identified Settling Parties" annexed as Exhibit 1 (the "Notice") to the prior order of this Court entitled "Order Fixing Hearing

Date on Joint Motion to Approve Settlement and Designate Identified Settling Parties dated February 14, 1992 (the "February 14 Order"); and a hearing on the Joint Motion having been convened before the undersigned on the 9th day of March, 1992, at 2:00 p.m. (the "Hearing"); and it appearing that notice of the Hearing has been duly and timely given to all Persons who have filed proofs of claim against the above-named Debtors or who have been scheduled as creditors of the above-named Debtors, and all Persons who are Equity Interest holders in the above-named Debtors, in accordance with the February 14 Order; and it further appearing that a copy of the Notice was served upon each Person that has filed a notice of appearance or request for service of papers in these Chapter 11 Cases in accordance with

Rule 2002 of the Federal Rules of Bankruptcy Procedure in accordance with the February 14 Order; and the terms and conditions of the compromises and settlements (collectively, the "Global Settlement") of the Debtors' claims against those Persons listed in Exhibit A to this Order (the "Settling Participants") having been filed with the Court; and the Court having reviewed and considered all objections to the Joint Motion that were duly and timely filed with the Court and served on the parties in interest in accordance with the terms of the February 14 Order; and the Court having considered the affidavit of Richard J. Davis, Esq., duly sworn to on the 9th day of March, 1992 ("Davis Aff."), and the Memorandum of Law in support of the Settlement and Designation of Identified Settling

Parties and in Opposition to objections that have been filed; and the Court having considered the statements of all counsel in the record of the Hearing in support and in opposition to the proposed Global Settlement and designations as Identified Settling Parties; and the Court having determined that no other notice of the entry of this Order need be given; it is

NOW, upon the Joint Motion, the record of all proceedings had herein in connection with the Joint Motion and in the above-captioned Chapter 11 cases, the Court hereby FINDS, DETERMINES, ORDERS, ADJUDGES AND DECREES as follows:

1. the Global Settlement of the Drexel Debtors' claims against the Settling Participants is fair and reasonable, and is in the best interests of the Debtors' estates, creditors and

and shareholders.

2. The Global Settlement falls within the range of reasonableness. In re Teltronics Serv., Inc., 762 F.2d 185, 189 (2d Cir., 1985); In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir.), cert. denied, 464 U.S. 822 (1983).

3. The Court has considered, among other things, the probability of success in litigation of the Drexel Debtors' claims against the Settling Participants in comparison to the benefits offered by the Global Settlement, the fact that the Settling Participants have rigorously denied all liability, the critical role that various providers of Directors and Officers Liability Insurance are playing in making the Global Settlement possible, the prospect of complex and protracted litigation if the Global Settlement is not approved, the degree

to which the settlement is supported by the parties in interest, the competency and experience of counsel who support the settlement, and the relative benefits to be received by the Debtors' estates and their creditors. (Davis Aff.), Drexel v. Loomis, 35 F. 2d 800, 804 (8th Cir., 1929).

4. The Settling Participants' contributions to Global Settlement provide material benefits to the Debtors' estates and to the consummation of the Plan (Davis Aff., paras. 5, 6, 7, 11).

5. The Joint Motion be, and it hereby is granted in all respects.

6. The Global Settlement of the Drexel Debtors; claims against the Settling Participants be, and it hereby is, approved in all respects and the Pool administrators be, and they hereby

are, authorized and empowered to issue, execute and deliver such documents and instruments, and to take such other and further actions as may be necessary and appropriate to implement and effectuate all terms, provisions and conditions of the Global Settlement in accordance with its terms.

7. The Persons whose names are listed on Exhibit A to this Order (and entities controlled by such Persons and who are members of the Settling Participant Group under the Global Settlement, hereafter "Controlled Entities") are hereby designated as "Identified Settling Parties" as that term is defined and used in the Plan, and they are entitled to the benefits provided for pursuant to Sections 12.2 and 12.3 of the Plan; provided that such designation may be revoked by the Court

if any Settling Participant fails to execute and deliver definitive Global Settlement documentation therefor to the Pool Administrators on or before March 16, 1992 at 6:00 P.M. E.S.T. Before March 23, 1992, Drexel shall file with the Court a revised Exhibit A eliminating all Persons as to which such designation has been revoked. Before April 24, 1992, Drexel shall file with the Court the list of all Controlled Entities.

8. The Insurance Companies whose names are listed on Schedule B to this Order are hereby designated as "Identified Settling Parties" as that term is defined and used in the Plan, provided that such designation may be revoked by the court if definitive documentation of settlements of such companies is not filed with the court by

May 4, 1992.

9. The Court shall retain jurisdiction over all perties to the Global Settlement until all payments required to be made thereunder have been paid or the Global Settlement agreements have been terminated in accordance with their terms.

10. Neither confirmation of the Plan, entry of the Confirmation Order, nor approval of the Global Settlement, and any injunctions provided for thereby or hereby shall prohibit the Internal Revenue Service (the "IRS") from asserting claims for excise taxes under I.R.C. Sec. 4975 (and related additions to tax and interest, if any) against Michael R. Milken for the tax years 1984 through 1991; nor shall they be construed as prohibiting Michael R. Milken from asserting any defense

against such excise tax claims. Neither confirmation of the Plan, entry of the confirmation Order, nor approval of the Global Settlement, and any injunction provided for thereby or hereby shall prohibit the IRS from asserting any claims that it may have for individual income tax liabilities (including any tax treated as an income tax) against any Identified Settling Parties or any of the Identified Officers, directors and Other Parties, nor shall they be construed as prohibiting the Indemnified Officers, directors and Other Parties from asserting any defenses against such claims.

Dated : New York, New York

March 9, 1992

s/s Milton Pollack

Senior United States District Judge

Filed : March 23, 1992
U.S. District Court, S.D.N.Y.

(caption as on page 58a)

ORDER No. 23

Tne Debtors having filed with the Court a revised list of Identified Settling Parties as required by the Order of the Court dated March 9, 1992, such list being Revised Exhibit A to this Order, the Court hereby orders that the persons whose names are listed as Revised Exhibit A to this Order (and entities controlled by such Persons and who are members of the Settling Participant Group under the Global Settlement) are hereby designated as the Identified Settling Parties as determined by the Order of the Court dated March 9, 1992.

Dated : New York, New York
March 23, 1992

/s/Milton Pollack
Senior United States District Judge

FILED: April 3,1992, DUPLICATE ORIGINAL

U.S. DISTRICT COURT, S.D.N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL DEPOSIT INSURANCE CORP.

Plaintiff,

- against -

MICHAEL R. MILKEN, et al.

Defendants.

91 Civ. 0433 (MP)

DREXEL BURNHAM LAMBERT, Inc. et al.

Plaintiffs,

- against -

MICHAEL R. MILKEN, et al.

Defendants.

91 Civ. 6108 (MP)

In re THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Debtors.

90 Civ. 6954 (MP)

ORDER No. 24

IT IS ORDERED THAT :

The individuals named below are to be given an opportunity in camera to review Confidential Settlement Information on two subjects:

1. The names of the contributors to the Settlement and the amounts thereof.
2. Summary information of the approximate net worth of each of the individual parties-defendants named by the FDIC/RTC in the above pending lawsuits in response to the form established by the Court.
3. The conditions which govern such disclosure which the parties, including

the FDIC and the RTC, have accepted and agreed to are as follows :

a. The date for the disclosure shall be not later than April 13, 1992, subject to extension to meet the actual scheduling requirements of the Court's Monitor and the reviewers of the disclosed information.

b. The persons who may review the Confidential Settlement Information shall be strictly limited to the Chief Executive Officer of the RTC, the chairman of the FDIC (or said chairman's designated employee), Thomas D. Barr, as attorney, Melvyn I. Weiss, as attorney, the Monitor provided for in the Settlement Stipulation (collectively, the "Reviewers"), and this Court. Each of the Reviewers shall execute under oath and deliver to this Court and counsel for the Settling

Individuals an undertaking in the form annexed hereto prior to reviewing the Confidential Settlement Information.

4. The disclosure is being made for settlement purposes only and is deemed an invasion of the right of privacy, and is acceded to in furtherance of the Settlement only. The conditions for such review shall be that:

a. None of the Reviewers shall make any notes or any other writing or recording containing, embodying, reflecting, summarizing or describing in any way, any of the Confidential Settlement Information during their review or at any time thereafter;

b. The Reviewers shall not discuss, disclose, reveal, describe or otherwise disseminate or communicate in

any way or at any time, other than at the reviewing session provided for in Annex H of the Settlement Stipulation, any of the Confidential Settlement Information to any person or entity, including, without limitation, to any employees, officers, directors, attorneys, or other persons in the Reviewers' own firms, agencies or organizations.

5. Any proceeding before this Court regarding the Confidential Settlement Information shall be in camera and any transcript thereof shall be sealed; and in any such proceeding, the obligations of this Order shall otherwise apply with respect to all information or material discussed or disclosed at such proceeding.

6. The obligations provided for in this Order shall survive the

termination of any or all of the above captioned matters, by settlement or otherwise, and this Court shall retain jurisdiction for purposes of enforcing this Order. Any violation of this Order shall be punishable by contempt, in addition to other available remedies, including consideration of the dismissal of the FDIC/RTC claims herein.

Dated : New York, New York
April 3, 1992

/s/ Milton Pollack
Senior U.S. District Judge

Endorsement :

This order was originally drafted dated March 7, 1992 before filing and to conform the actual filing date was redated April 3, 1992 without any other change. /s/ Judge Milton Pollack

FILED: April 29, 1992
U.S. District Court, S.D.N.Y.

(caption as on page 58a)

ORDER No. 31

The Debtors having filed with the Court a final list of Identified Settling Parties as required by the Order of the Court dated March 9, 1992, such list being Final Exhibit A to this Order, the Court hereby orders that the Persons whose names are listed on Final Exhibit A to this Order are the Identified Settling Parties designated by the Order of the Court dated March 9, 1992 and entitled to the benefits of the release and injunction described in Sections 12.2 and 12.3 of the Second Amended and Restated Joint Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code.

Dated : New York, New York

April 24, 1992

/s/ Milton Pollack
Senior United States District Judge
4/29/92

Exhibit A

Abbott, Roy	Beck, Jeffrey P.
Abecassis, Paul	Bencivenga, Joseph
Ackerman, Jack	Bergman, Richard A.
Ackerman, Peter	Bergmann, David W.
Adams, Joseph P.	Berman, Martin L.
Anreder, Steven	Beyer, Robert D.
Asen, Joel	Biddleman, Paul
Astrachan, Andrew	Bilger, Arthur H.
Attanasso, Mark	Black, Leon
Austen, Eileen	Bloom, Jay
Bachelor, Herbert	Borden, Frederick
Bailowitz, Stanley	Boudakian, Thomas
Balash, Jeffrey	Brodsky, Gerald
Balser, Donald	Bron, William
Bathon, Dan	Brown, Bruce

Brown, Michael D.	Brumberger, E. Alan
Budish, Jon E.	Cameron, Dort A.,III
Cates Gordon,Nancy	Cauchois, Thomas
Cavalier, John	Chanin, Jeffrey
Chasin, Mark	Chu, Franklin
Chulick, John	Clerkin, Thomas P.
Cogut, Craig M.	Connors, Thomas
Crowell, Richard	D'Ambrosio, Lorraine
Dahl, James	Dargan, Charles
Davidow, Robert	Davidson, Marshall
Delany,Logan D.,Jr.	DeRemer, Carl
Dolan, Dennis	Dumler, Richard
Edersheim, Maurits	Engel, Donald
Evensen, Chris	Fallon, Robert
Faux, Geoffrey L.	Feinman, David
Finerman, Ralph	Fishbein, Alan J.
Fischer, Steven	Flanagan, Patrick
Flans, Allen	Frary, Richard S.
Friedman, Joshua	Frymer, William
Galgano, Dennis M.	Gardiner, Peter R.
Garver, Bruce	Gelfond, Richard L.

Gellert,Michael E.	Gold, Joel L.
Goodman, Mark	Goodwin, Robert
Gorman, Kevin J.	Green, Jeffrey
Hannan, John J.	Harch, Joseph
Harman, Reed L.	Hedley, David
Heyer, Andrew	Heyke, John
Higbee, Paul	Hochman, Richard H.
Horowitz, Harry	Humphreville, John
Humphreville,Susan	Jetter, Paul
Johnson, Roy J	Jones, Lisa
Jospe, Roger	Julis, Mitchell R.
Kantor, Edwin	Kay, David
Kehler, Dean	Kendall, Donald
Kiarsis, David	Kissick, John
Klein, Barry F.	Kline, Robert
Knox, Lynne	Koenig, Gerald
Koerner, Gerald	Kohl, Robert L.
Krasznekewicz,John	Ladyzinski, John A.
Lagumen, Graciela	Lamport, Anthony
Lane, Jeffrey	Langer, Jack
Levy, Paul	Lewis, Trevor

Lloyd, Robert	Loden, Bridgette S.
Madigan, Kevin J.	Mael, Joel
Maggard, J.O.	Malanoski, Mary Lou
Mass, Alison J.	Maultasch, Cary J.
McCarthy, Frederick	McClure, Douglas
McMahon, John	Meade, Leonard
Milken, Lori	Milken, Lowell
Milken, Michael	Milken, Sandra
Mills, David	Moelis, Kenneth
Monzert, Pamela	Moriarty, John
Moseley, Frederick	Moss, Philip W.
Mullen, Donald	Nadler, Allen
Neuman, Jeffrey L.	Nevins, Richard
Newberg, Bruce	Noonan, Mark
Noonan, Thomas	Peizer, Terren S.
Phillips, Arthur	Post, Lawrence A.
Price, James D.	Purkey, Harold
Raben, Bruce	Radecki, Joseph J.
Rapaport, Marc	Ravich, Jess M.
Rawlings, James L.	Reed, Langhorne, IV
Reinhart,Thomas R.	Ressler, Anthony

Ridings, Barry W.	Rock, Randy
Rosee, Richard	Rosenfeld, Naomi
Rosenthal, Alan E.	Roth, Stephen
Rotschild, Peter	Sandler, Richard V.
Savin, Patrick	Schefler, Sylvan
Schiffner,James	Schlumberger, Nicholas
Schneider, James A.	Shultz, Kevin W.
Shapiro, Janice L.	Shields, Allyson
Shohet, Ruben	Sokoloff,Jonathan D.
Sorte, John	Spurge, Lorraine
Stedman, Linda	Stein, Stanley
Stern, Lee	Sullivan, James G.
Sydorick, David	Taylor, Cathryn
Taylor, John	Thurnher, Charles A.
Tobey, William R.,Jr.	Trepp, Warren
Trotman, Stanley	Utay, Marc A.
Van Utt, Patsy	Varughese, George
Victor, Edward G.	Virtue, James E.
Wagner, Leon	Wehrwein, Sven
Weinhuff,Jeffrey E.	Weinroth,Stephen D.

Wilf, Henry M.	Willson, Alexa D.
Winnick, Gary	Winningham, Stephen
Ying, David	Yurcak, Ronald N.
Dupont, David	Douglas, Scott
Eng, William	Handler, Richard
Harrison, Scott	Jablonow, Jay
Jetmore, Jon	Lehrman, Douglas
Welker, John	Bucci, Gerard M.
Michael Fields	Kantor, Steven
Moglia, James	Ranger, Michael
Rapisarda, Paul	Thomas, Marla
Trouveroy, Olivier	Graham, Patrick L.

There follow approximately 600 entities (partnerships, corporations) created by the above named individuals and others.

Filed : August 20, 1991
U.S. District Court, S.D.N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Debtors.

90 Civ. 6954 (MP)

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

against

DREXEL BURNHAM LAMBERT INCORPORATED, THE DREXEL BURNHAM LAMBERT GROUP, INCORPORATED et al.

Defendants.

88 Civ. 6209 (MP)

DECISION

CONSOLIDATED FINDINGS OF FACT

AND CONCLUSIONS OF LAW

* * *

POLLACK, Senior District Judge

CONRAD, Bankruptcy Judge.

FINDINGS OF FACT

I.

1. By Order dated May 10, 1991, this Court certified temporarily, and for settlement purposes only, a mandatory non-opt-out class of all securities litigation claimants (the "Mandatory Class") and two mandatory, non-optout subclasses (the "Mandatory Subclasses") pursuant to Bankruptcy Rules 7023 and 9019 and Rules 23(a) and (b)(1)(B) of the Federal Rules of Civil Procedure.

2. The Court also preliminarily approved the terms of the compromise

and settlement embodied in the Securities Litigation Claims Settlement Agreement dated May 3, 1991 (the "Settlement") for purposes of scheduling a hearing thereon and to direct notice to be sent to the Class Members.

3. Notice of the August 9, 1991 hearing on the fairness, reasonableness and adequacy of the Settlement was mailed to more than 161,000 members of the Class and Subclasses.. In addition, summary notice was published on two separate occasions in each of six different newspapers (The Wall Street Journal, New York times, Los Angeles Times, the Financial Times, The Chicago Tribune and The International Herald Tribune) throughout the United States.

4. In a Memorandum filed herein, dated August 9, 1991, the Court made brief basic findings of fact and rulings

and the same are hereby incorporated herein, and for convenience restated as follows :

due deliberation having been had on all of the foregoing, it is ordered that :

1. A sufficient evidentiary basis has been established herein for each of the following :

A) All the requirements of the Federal Rules of Civil Procedure 23(a) and 23(b)(1)(B) have been satisfied for certification of the mandatory non-opt-out class and subclasses A and B of all securities litigation claimants who timely filed proofs of claim in the chapter 11 cases of the Debtors;

B) The settlement that has been proposed is fair, reasonable, and adequate, in actual compliance with

Federal Rule of Civil Procedure 23(e);

C) The amended plan of distribution of the civil disgorgement fund is fair, reasonable and adequate.

D) The objections to the formation and appropriateness of the mandatory classes and their incidents lack merit, and the request of the creditors Liggett Group and Liquid Green Trust to opt out are denied in the Court's discretion;

E) The objections to the settlement are unsupported in fact and lack merit in the face of the totality of the compromise established.

In more detail the following are the supplemental and additional Findings of Fact herein.

II.

5. In 1988, the SEC filed the action entitled SEC v. Drexel Burnham Lambert Inc., et al., 88 Civ. 6209 (MP) (S.D.N.Y., 1988) (the "SEC Action") against, among others, Drexel Burnham Lambert Incorporated ("Inc."), The Drexel Burnham Lambert Group, Inc. ("Group") and Michael Milken ("Milken") who had been the head of Inc.'s High Yield and Convertible Bond department ("HYBD"). The SEC Action was presided over by this Court.

6. Group and Inc. settled the SEC Action and agreed to pay a total of $350 million to be deposited into a civil disgorgement fund established to satisfy eligible civil litigants who had

federal securities claims against Drexel arising out of the activities of the HYBD, occurring between January 1, 1978 and January 24, 1989 (the "Drexel Fund"). Of that amount, $200 million was paid pre-petition, and the Settlement provides for the $150 million balance to be paid upon consummation of the Plan.

7. Milken later settled the SEC Action by paying a total of $400 million to a disgorgement fund established for the benefit, to the extent thereof, of civil claimants for compensatory damages against him (the "Milken Fund"). Said Milken fund is subject to an amended Plan adopted by the SEC and approved by the Court as fair, reasonable and adequate for distribution of the disgorgement fund benefits including percentage allowance between certain

Subclasses of the Mandatory Classes referred to hereinafter.

III.

8. On February 13, 1990, Group filed with the Bankruptcy Court for the Southern District of New York a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

9. Subsequently, Inc. and 18 of Group's other subsidiaries (collectively, the "Debtors"), many of which had trading capabilities in domestic and international securities, income, equity and interest-rate products, commodities and currencies, either filed a petition for relief or were the subject of an order for relief under Chapter 11.

10. By order of the Bankruptcy Court dated June 20, 1990, the Debtors'

Chapter 11 cases were consolidated for procedural purposes only pursuant to bankruptcy Rule 1015(b). They curently continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. On June 29, 1990, the book value of the assets of Group and its subsidiaries on a consolidated basis was $3.27 billion. This amount declined to $2.54 billion by December 28, 1990 and was about $2.391 billion as of June 28, 1991.

12. The amount of liabilities reflected on the consolidated balance sheet of Group and its subsidiaries declined from $2.69 billion on June 28, 1990 to $2.502 billion on June 28, 1991. However, these figures do not reflect off-balance sheet liabilities such as

contingent and disputed claims against Debtors.

13. As of May 29, 1990 (the date Inc. filed its Chapter 11 petition), The disputed contingent litigations entailed approximately 400 pending cases in federal and state courts and in various arbitration fora which named one or more of the Debtors as defendants or respondents (the "Pending Actions"). One group of cases in the Pending Actions - the Ivan Boesky Litigation also known as MDL 732 - has been presided over by this Court since 1987.

14. By order dated July 23, 1990, the Bankruptcy Court set November 15, 1990 as the deadline for filing proofs of claim and proofs of interest against the Debtors' estates (the "Bar Date"), except for certain claims against the estates, including those of the Internal

Revenue Service (the "IRS"). February 13, 1991 was fixed as the deadline for the IRS to file its proof of claim against the Debtors' estates.

15. Over 15,000 claims were filed against Debtors by the Bar Date including the claims of those who had initiated Pending Actions. The aggregate face value of those claims which set forth a claimed amount of damages exceeds $200 billion. Additionally, approximately 6,500 claims fail to set forth any amount of claimed damages. After eliminating duplicative, multiple, late and other defective claims subject to expungement under the Bankruptcy Code, claims with an aggregate face value between $29 billion and $30 billion remain. As such, the claims asserted against the Debtors are more than ten times greater than the

current assets of the Debtors' estates.

16. Out of the 400 Pending Actions extant at the time of Inc.'s filing, about 110 were pre-petition court actions pending against one or more of the Debtors which were based upon federal and state securities laws, the RICO statutes, or the antitrust laws (the "Pending Securities Actions").

17. These Pending Securities Actions and later filed similarly-based securities law claims (non-duplicative) accounted for approximately 850 of the claims filed against the Debtors by the Bar Date. These claims aggregate well in excess of $20 billion (including claims not having a clear face value). These claims, including the Pending Securities Actions, became known in the Debtors' bankruptcy cases and in the Settlement as the "Securities Litigation

Claims."

18. The grossly disproportionate ratio of liabilities to assets faced a limited and continually dwindling fund from which Debtors could pay only a fraction of the successful claims asserted against them.

19. During the Summer of 1990, before the Bar Date and even before they all filed their actual claims against the Debtors, a group of securities Litigation Claimants sought official committee status from the United States Trustee on the ground that they represented important Drexel contingent creditors all of whom showed enough common ground to be representative of other Securities Litigation Claimants. While such status was denied them, Debtors negotiated a Bankruptcy Court-approved stipulation with this group,

who named themselves the Securities Litigation Claimants Group ("SLCG"), pursuant to which Debtors agreed, inter alia, to treat SLCG as parties-in-interest and negotiate with them in good faith on various matters, including the terms of any reorganization plan affecting such claims.

20. The original members of SLCG were : the S.E.C.; Cravath, Swain & Moore, counsel for the FDIC/RTC; Milberg Weiss Bershad Specthrie & Lerach ("Milberg Weiss"), who were lead and co-lead counsel in numerous class and derivative actions against Drexel; Berger & Montague, P.C. and Wolf Popper Ross Wolf & Jones, who were lead/liaison counsel for class plaintiffs in MDL 732 (the securities actions arising out of the SEC actions against Boesky, Levine, Milken and Drexel), and several other

individual claimants. The charter which created SLCG, as sets forth in a Bankruptcy Court ordered stipulation, specifically stated that these claimants organized themselves into SLCG "in order to advance interests of common concern."

21. Later on, other claimants, including an objector to the Settlement, Liggett Group, and another claimant with similar claims based on the purpose of Integrated Resources commercial paper, joined SLCG.

22. Prior to the Bar Date, Debtors attempted, but failed, to settle the pending Actions on an individual basis, because of the sheer number, complexity and the amount of the Securities Litigation Claims being filed against Debtors.

23. In an effort to free the settlement process or to remove through

litigation the blocking effect of these huge Securities Litigation Claims, Debtors moved on October 26, 1990, for the withdrawal of the reference of jurisdiction from the Bankruptcy Court for the purpose of estimating and capping all the Securities Litigations Claims (the "Withdrawal Motion").

24. At a status conference held shortly after the Debtors filed the Withdrawal Motion, this Court directed the Debtors and members of SLCG to engage in a joint effort to find common ground for a format in which to estimate the Securities Litigation Claims.

25. On November 27, 1990, the return date of Debtors' Withdrawal Motion, the interested parties appeared before this Court to argue the respective merits of estimation under section 502(c) of the Bankruptcy Code.

26. The Court indicated that it disagreed with those who wished to estimate all Securities Litigation Claims, calling it an exercise in futility if Debtors' liquidation was the likely result, and rejected the notion that over 100 separate estimations and settlements of matters of this size and complexity could be concluded in this century (and this applied them only to the Pending Securities Actions, not to the further Securities Litigation claims filed prior to the Bar Date). the Court adjourned the hearing until February 18, 1991 with instructions to representatives of the Debtors, the Official Committees of Creditor and Equity stockholders and four specific representatives of the Securities Litigation claimants to explore the possibility of reaching a global

settlement on the basis of a consensual estimation so as to reduce the amount of the Securities Litigation Claims.[1/]

27. Following the November 27, 1990 hearing, with the encouragement and supervision of the Court, counsel for the Fixed creditors, the representatives of the Securities Litigation Claimants and the Debtors in earnest began a series of arduous, arm's-length negotiations focusing on global settlement of the Securities Litigation Claims through consensual estimation.

28. Over the course of numerous sessions, involving scores of experienced counsel for all the negotiating parties, specializing in litigation, bankruptcy, corporate and tax matters, efforts were made to finalize the terms of the proposed settlement.

29. Notwithstanding their efforts at settlement, the negotiating parties continued to press their positions through motion practice in both the Bankruptcy Court and this Court, including another motion by the Debtors to expedite estimation of the FDIC/RTC claims.

30. The February 18, 1991 hearing on the adjourned return date on Debtors' motions to withdraw the reference was presided over by both the District and Bankruptcy Courts. Although the negotiating representatives reported at that hearing that they had agreed on a broad outline of a global settlement proposal and had initialed a "Heads of Agreement" this Court stated that unless the Securities Litigation claimants soon reached a binding estimation of the value of their claims

by written agreement, the case would be converted into a Chapter 7 case pursuant to section 1112(b) of the Bankruptcy Code. 2/

31. During the February 18 hearing, Dennis J. O'Brien, appearing as counsel for the Liggett Group, Liquid Green and USX Corporation, indicated that he had not been involved in the prior negotiations. The Court commented, "it would have been impossible to have reached the desirable point with any more conferees than we have had." Mr. O'Brien responded, "that's why we didn't speak before now, Your Honor." 3/

1/ Nov. 27, 1990 Transcript at 4, 12, 14-15.

2/ Feb. 18, 1991 Transcript at 6-8.

32. At the conclusion of the February 18 hearing, the Debtors were directed to prepare an order to show cause, returnable on April 4, 1991, why the Chapter 11 cases should not be converted to Chapter 7 cases. All interested parties were notified.

33. By order dated February 19, 1991, the court withdrew the reference as to all of the Debtors' Chapter 11 cases, retained jurisdiction of the Securities Litigation claims and other non-core, non-related matters and re-referred all core matters to the Bankruptcy Court.

34. On February 19, 1991, the negotiating representatives reduced to writing and executed a "Securities Litigation Agreement in Principle" which incorporated the broad outlines of the settlement in principle that had been

reported to this Court on February 18. From that point until the conversion hearing before this Court on April 4, 1991, the representatives of the negotiating parties met in further around-the-clock, daily sessions together and in small groups in arm's length negotiations on the details of the terms of Settlement to be incorporated in the Agreement.

35. On April 4, 1991, multitudes of interested parties and their counsel appeared at the hearing on conversion of this case to a Chapter 7 liquidation.

36. The Court received evidence at the April 4 hearing on the financial condition of the debtors and took evidence in the form of affidavits, certifications and other documentation on the effect a Chapter 7 liquidation would have on the Debtors' assets and

the Debtors' ability to adequately satisfy the claims of its creditors.

37. The evidence indicated that nearly half of Debtors' estates consisted of illiquid and/or difficult to value assets such as high yield securities, partnership and real estate interests and leveraged buy out properties and leveraged leases, all of which potential multiple trustees in a Chapter 7 liquidation would be under a duty to dispose of in a prompt manner, without regard to maximization of the value of these assets and with the risk that distress sale values would result.

38. This Court also heard from all persons who wished to be heard on conversion to Chapter 7 or on any other issue. Counsel for all of the negotiating parties presented their views on the progress of The Settlement

and on the confirmability of the joint plan of reorganization (the "Plan") that they were negotiating. The representatives of the Securities Litigation Claimants also made clear that The Settlement was being negotiated on a mandatory class action basis.[4/]

39. All persons and entities represented at the hearing were afforded an opportunity to be heard and to contribute pro or con to the issues before the Court.

40. Mr. O'Brien appearing on behalf of The Liggett Group, Liquid Green and U.S.X. Corp. asserted that although his clients were members of SLCG, he had not sat in the negotiations, that he still preferred conversion into Chapter 7. The Liggett Group and Liquid Green, had purchased $13 million of the commercial papers of

Integrated Resources through Drexel, they have filed a joint objection to The Settlement. U.S.X. Corp. has not objected to The Settlement and neither have other purchasers through Drexel of approximately $100 million of such commercial paper.

41. In December 1990, Debtors successfully moved the Bankruptcy Court under Bankruptcy Rule 2004 for an order compelling the Securities Litigation Claimants to respond to a nine-point questionnaire concerning their claims. [5/] This questionnaire was mailed starting on December 26, 1990 to over 900 such claimants. Responses were received from 615 of them, including six responses from objector Liggett Group and responses from other objectors such as Hart Holdings Co./Reeves Industries Inc.

42. The questionnaire responses provided significant insight to the bases, amount and types of securities claims filed against the Debtors. Copies of the questionnaire responses were requested by, and provided to, the SLCG representatives during the course of settlement negotiations.

43. Pursuant to a motion made by the FDIC/RTC, the Bankruptcy Court ordered Debtors to produce to that Class representative and there were accordingly disclosed all non-privileged Bankr. Rule 2004 materials created over the course of 8 months of intensive discovery initiated by the Official Committees of Creditors and Equity shareholders.

3/ Feb. 18, 1991 Transcript at 20.

4/ Apr. 4, 1991 Transcript at 1-14, 24-37

5/ Dec 20, 1990 Transcript at 82-83.

44. Additionally, each of the Class negotiators had access to voluminous records, discovery and pleadings from related pre-petition actions against the Debtors and other third parties, and pre-petition actions brought against such third parties, and to the complete public record of these Chapter 11 cases.

45. Since the well-publiicized settlement discussions began almost nine months ago, no objector has moved the Court to obtain any discovery concerning The Settlement to support any objection made thereto.

46. Between April 4 and May 10, 1991, the representatives of the parties continued to negotiate and draft the terms of The Settlement and the proposed Plan. This process involved the negotiation of a highly sophisticated

transaction, implicating corporate, tax, bankruptcy, regulatory and litigation expertise and consequences. The outcome was The Settlement, dated May 3, 1991, and the attached Exhibits, which included the proposed Plan Term sheet. The Settlement is intricate; it has been derived from a process that involved direct and rigorous competition for a limited, dwindling fund of Debtors' assets between fixed Creditors, on the one hand, and Securities Litigation Claimants on the other.

47. The Settlement also created an opportunity for the Debtors to achieve a settlement with the IRS on July 26, 1991, whose facial $5.3 billion claim in and of itself vastly exceeded Debtors' assets. The IRS settlement appears (pending Bankruptcy Court approval) to be fair and reasonable and makes it

practical to project a plan of reorganization. The settlement and IRS settlement overcome two of the biggest stumbling blocks that Debtors believed they had to overcome to formulate a feasible Plan and that will now enable them to seek and obtain Bankruptcy Court approval of the Plan during the confirmation process.

48. On July 30 and 31, 1991, after an additional two months of arm's-length negotiations on those terms of the Plan that had not been finalized in the Plan Term Sheet, a working draft of the Plan (in almost final form) was furnished to the Courts for their information and distributed to all creditors on the Chapter 11 service list pursuant to Bankruptcy Rule 2002.

49. Only 14 alleged objections, in toto, were filed to The Settlement.

Of these, only 8 objections were filed by actual members of the Class, having standing to object.

50. The proponents of The Settlement and the SEC Disgorgement Distribution Plan at the hearing consisted of: (i) the Debtors, (ii) the four Official Committees appointed in these Chapter 11 cases, (iii) the four representatives of the Class, and (iv) the Securities and Exchange Commission (the "SEC"). Also appearing were 17 other persons and entities, including four who did not object, six who lacked standing to object as not being members of the Class, five Class members who did not object to The Settlement, per se, but to their relative status within The Settlement Class, and three Class members who objected to The Settlement per se. These latter objectors were

(a) joint objectors the Liggett Group and Liquid Green, (b) joint objectors Hart Holding Company and Reeves Industry, Inc.; and (c) William Leighton.

Objectors to their relative status within The Settlement Class included: (a) HongKongBank of London Ltd.; (b) Citibank, Den Danske and Lloyd's Bank, Plc, and Canadian Imperial Bank of Commerce who filed a joint objection; (c) PALCO; (d) Society Bank; and (e) certain plaintiffs in MDL 732 who sought inclusion of future judgment reduction and set-off features in The Settlement.

51. Those who did not object at the hearing included: (a) PLM International, Inc; (b) First Trust National Bank; (c) American International Group; and (d) Michael Milken (who lacked standing and withdrew

objection). Those who lacked standing to object at this time include: (a) Bank of Yugoslavia; (b) Messrs. Godring, Elkins, Fish, Rosenthal and Spiegel who filed a joint objection; (c) American Bankers Group; (d) twenty partnerships whose joint objection was filed by Sidley & Austin; and (e) Sylvan Shefler.

52. The Settlement permits the debtors to avoid liquidation under Chapter 7 and almost certainly saves the Debtors' assets for the Class from virtually total depletion that would be the result of Chapter 7 administrative expenses and a Chapter 7 distress sale.

53. The Mandatory Class, certified for settlement purposes only, consists of all Securities Litigation Claimants who filed timely proofs of claim in the Debtors' Chapter 11 cases and who are listed on Exhibit A or B thereof (or who

may be added to either list pursuant to The Settlement including claims listed on Exhibit C). The Mandatory Class includes:

a. the persons who are the named claimants on such proofs of claim;

b. all putative members of the respective classes or other persons or entities whom the named claimants on such proofs of claim purport to represent either as set forth on such proof of claim or in any of the class action Pending Securities Actions against Drexel referred to in the proofs of claim as listed on Exhibit A or B of The Settlement (including any claims which may be added to Exhibit A or B from Exhibit C); and

c. the corporations on whose behalf derivative Pending Securities Actions were brought against any of the Debtors

listed on Exhibit A or B (including any claims which may be added to Exhibit A or B from Exhibit C).

54. The Mandatory Subclasses, certified for settlement purposes only, are Subclass A and Subclass B. Subclass A consists of all Securities Litigation Claimants who filed timely proofs of claim in the Chapter 11 cases of the Debtors and who are listed on Exhibit A (or who may be added to Exhibit A pursuant to The Settlement, including claims listed on Exhibit C).

Subclass A includes:

a. the persons who are named claimants on such proofs of claim;

b. all putative members of the respective classes or other persons or entities whom the named claimants to such proofs of claim purport to represent either as set forth on the

proof of claim or in any of the class action Pending Securities Actions against Drexel referred to in the proofs of claim as listed on Exhibit A; and

c. the corporations on whose behalf derivative Pending Securities Actions were brought against any of the Debtors as listed on Exhibit A.

55. Subclass B consists of all securities litigation claimants who timely filed proofs of claim in the Chapter 11 cases of the Debtors and who are listed on Exhibit B (or who may be added to Exhibit B pursuant to The Settlement, including claims listed on Exhibit C). Subclass B includes :

a. the persons who are named claimants on such proofs of claim;

b. all putative members of the respective classes or other persons or entities whom the named claimants on

such proofs of claim purport to represent either as set forth on the proof of claim or in any of the class action Pending Securities Actions against Drexel referred to in the proofs of claim as listed on Exhibit B; and

c. the corporations on whose behalf derivative Pending Securities Actions were brought against any of the Debtors as listed on Exhibit B.

* * *

65. F.R.Civ.P. 23(b)(1)(B)

a. The prosecution of separate actions by or against individual members of the Mandatory class would create a risk of adjudications with respect to individual members of the Mandatory class which as a practical matter would be dispositive of the interests of the other members not parties to the adjudications or substantially impair or

impede their ability to protect their interests.

b. As shown in the certificate of Peter Gruenberger filed in support of the Application for Approval of the Securities Litigation claimants Settlement ("the Gruenberger Certificate"), and the affidavits of John F. Sorte, and Richard J. Wright annexed thereto, the assets of the Debtors' Estates constitute a limited fund which is dwindling and which is insufficient to satisfy all claims of the Class members:

(1) the assets of the Debtors' estates are currently valued at approximately $2.4 billion.

(2) Allowed liquidated unsecured claims against the estates currently amount to $2.5 billion.

(3) There are approximately

$29-$30 billion face amount of disputed claims against the Debtors' estates.

(4) the face amount of disputed claims filed on or on behalf of members of the class aggregate in excess of $20 billion.

(5) The limited fund available is insufficient to satisfy the claims of all members of the Mandatory class, whether the class claims are viewed as having priority over the liquidated claims, on par with such claims, or subordinate to subclasses.

66. For all the reasons set forth above with respect to the Mandatory Class, the prosecution of separate actions by individual members of the Ssubclasses would create a risk of adjudciation with respect to individual members of the Mandatory subclasses

which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

67. Weighing the best interests of the members of the Class and of the Subclasses and the values of The Settlement to said members, it would be inimical to those interests to grant any member leave to opt-out of the Classes and leave to opt-out is denied in the Court's judgment and discretion.

68. Notice:

Notice of the proposed Settlement of the Mandatory Class and subclasses as required pursuant to F.R.Civ.P. 23 and due process was sufficient, both as to form and content, to apprise interested parties of the pendency of the

Settlement on behalf of the Class and afford them an opportunity to present their objections.

69. By the Class Order, this Court preliminarily approved the terms of The Settlement embodied in the Agreement dated May 3, 1991, subject to a hearing upon notice to members of the Class.

70. The Court also certified temporarily, for settlement purposes only, the Mandatory class and the Mandatory Subclasses, pursuant to bankruptcy rules 7023 and 9019 and F.R.Civ.P. 23(a) and (b)(1)(B).

71. Pursuant to the Class Order, due and sufficient notice was given to the members of the Class and subclasses, by mail and by publication. The last date for objecting to The Settlement was July 24, 1991.

72. Although the value of the

Settlement in total dollars cannot presently be estimated with precision, there is sufficient evidence to demonstrate the values of the Debtors' estates in which the class will receive percentage interests. As shown in the Weiss, Nemser and Berger Affidavits in support of The Settlement, there is a reasonable prospect that the Debtors' estates could be valued at $1.8-$2 billion or more after deduction of certain fees and expenses. Based upon The Settlement, and assuming a valuation of the estates at $2 billion, the benefit to the class as a whole would be $810 million, with $607.5 million allocable to Subclass A (not including recoveries under the pooled claims) and $202.5 million allocable to Subclass B (not including certain other benefits attributable to that Subclass).

73. Based upon the findings set forth with respect to a determination that a limited fund exists, the Debtors' assets are sufficiently limited that they would not be able to withstand a greater judgment. The Settlement, with respect to the Class, is fair and reasonable and adequate.

74. The Settlement is likewise fair, reasonable and adequate with respect to both Subclasses A and B. In reaching this conclusion, the Court finds that the Settlement proceeds allocable to Subclass A constitute a fair, reasonable and adequate allocation. The portions allocable to Subclass B constitute a fair, reasonable and adequate allocation to Subclass B.

75. Under the terms of the Settlement and the SEC Plan, Subclass A members will receive 75% of the fixed

assets and eligible members of Subclass A will receive 75% of the Drexel Fund (after first setting aside an allocation reserve for certain claims filed after the Bar Date, with approval of the Court). Subclass B members will receive 25% of the fixed assets and eligible members of Subclass B will receive 25% of the Drexel Fund (after setting aside the allocation reserve). Eligible members of Subclass B will also receive any balance remaining in the allocation reserve established under the Drexel Fund. In addition to the foregoing, Subclass B members will receive $15 million, less expenses incurred by counsel in allocating the Settlement funds among Subclass B members. Subclass B members may also receive certain portions of the recoveries to be obtained by Subclass A

members in connection with the pooling arrangements.

76. The allocation between Subclasses A and B are fair, reasonable and adequate because:

a. The allocation to each Subclass bears a reasonable relationship to potential maximum recoveries against Drexel, and takes into account that Drexel would be only partially responsible for the alleged violations, and

b. The allocations were the result of extensive arm's-length negotiations among highly experienced counsel, who considered all relevant factors, including the following: (a) that Subclass A members were required to pool their claims with the Debtors' similar claims and to share recoveries thereunder, both inter se and with the

Fixed Creditors, (b) that the values of the claims asserted by subclass A members, including the individual, class and derivative claims and the claims of the FDIC and RTC, exceeded the monetary amounts in the claims asserted by Subclass B.

77. The Settlement is fair notwithstanding that the actual amounts to be distributed to class members will be subject to further allocation procedures within each of the Subclasses.

78. The allocation procedures will protect the interests of each of the Subclass members. Moreover, the procedures will govern distributions not only from the fixed assets, but also from the Drexel Fund and will be subject to further Court approval.

Thus adequate safeguards exist to provide that Subclass A and Subclass B members will be fairly and adequately compensated out of Drexel's assets.

79. The fact that some Subclass members are eligible to participate in the Drexel Fund, while others are not, does not affect the reasonableness of the Settlement or create a conflict among the Subclass members. The immediate funding of the Drexel fund and obtaining of benefits for Securities Litigation Claimants served the best interests of and satisfied claims of all the Class members. That a Class member would not participate in the Drexel Fund may be considered in determining such Class member's share of the fixed assets.

80. The Settlement is reasonable in light of the complexity, expense and

likely duration of the litigation. Litigation through estimation procedures and appeals would be wasteful, needlessly expensive and could substantially reduce the amounts available for Settlement. In addition, the risks inherent in conversion of these Chapter 11 cases to a liquidation pursuant to Chapter 7 further supports the reasonableness of the Settlement.

81. The Settlement is fair, reasonable and adequate in light of the risks involved in establishing liability, damages and in maintaining a class action through trial. The risks include:

a. the estimation and capping procedures contemplated herein might resolve Class members' claims against the Debtors at levels far below the amounts to which they believe they would

be entitled with no capping, and with full discovery and a plenary trial;

b. the fact that the full funding of the Drexel Fund was at risk by virtue of the claims of other creditors that such funding was improper;

c. the risk of a possible conversion of these bankruptcy cases to a Chapter 7 liquidation proceeding could adversely affect the eventual recoveries available for Securities Litigation claimants; and

d. imposition of the automatic stay and the extension of the stay to non-Debtor personnel have created potential risks in prosecuting the claims not only against the Debtors but also in ongoing actions against third parties.

82. The Court finds that risks are generally inherent in litigation, particularly in complex claims such as these.

83. The Settlement was negotiated with knowledge of the strengths and weaknesses of the litigations involved.

84. The affidavits of Weiss, Nemser and Berger and the certificate of Gruenberger, establish that the Representatives of the Mandatory Class had extensive negotiations with the Debtors and the Fixed Creditors over many months. Substantial financial information was provided to the said representatives with respect to the status of the Debtors' assets. In addition, extensive discovery has been ongoing, involving countless documents and numerous depositions in may of the contingent class and derivative actions. Counsel for the class have received access to essential discovery taken in connection with a Rule 2004 examination. Under the circumstances, the Class

representatives had sufficient information to assess whether the Settlement was fair, reasonable and adequate.

85. For all the reasons sets forth above with respect to the Mandatory class, the Settlement on behalf of the Subclasses was negotiated with knowledge of the strengths and weaknesses of the litigations involved.

86. The virtual absence of negative response to the Class members supports approval of the Settlement.

87. For the reasons set forth above with respect to the Mandatory Subclasses, the absence of any substantial negative response of the members of the Subclasses supports approval of the Settlement. No Subclass A members have objected on the basis that the Settlement is not fair,

reasonable and adequate. Only eight objections to any portion of the Settlement were filed by members of Subclass B.

* * *

Filed : November 13, 1990

U.S. Bankruptcy Court, S.D.N.Y.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Proof of Claim/Interest. No. 6532

In re : Drexel Burnham Lambert Incorporated 90 B 11646

Name of Debtor Company :

Drexel Burnham Lambert Incorporated

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1. Name of claimant: William Leighton, 249 West 11th Street, New York, N.Y. 10014, (212) 255-0001, on behalf of himself as a former shareholder of

Beatrice Companies, Inc., a Delaware corporation ("Beatrice") and on behalf of all persons who had bought their shares of the common stock of Beatrice Companies, Inc. before April 17, 1986, the Effective Time of the merger of Beatrice into BCI Holdings Corporation, a Delaware corporation, ("the class").

Amount of Claim Asserted by claimant on behalf of the class:
$86,187,500 (eighty-six million one hundred and eighty-seven thousand five hundred United States dollars). Number of Beatrice common shares owned by the class : approximately 113,840,665.

Claimant's Social Security Number : 094-30-3098.

2. The Debtor was, at the time of the filing of the petition initiating this case and still is, liable to the claimant class in the sum of

$86,187,500.00.

3. The consideration for this ground of liability is as follows :

On March 11, 1986, BCI Holdings Corporation, a Delaware Corporation, offered by prospectus to effect the Beatrice-BCI merger subject to the receipt of the proceeds of the Debt Financing consisting of the securities bought by the Debtor. A copy of the title pages of that prospectus is attached. The prospectus itself covers approximately 200 pages.

On April 10, 1986, the Debtor has underwritten and has purchased from BCI Holdings Corporation (i) $600,000,000 in 11⅜ Ten Year Senior Notes, for which it has received an underwriting discount of $16,500,000; (ii) $800,000,000 12½% Twelve Year Senior Subordinated Debentures, for which it has received an

underwriting discount of $25,600,000; (iii) $950,000,000 in 12 3/4% Fifteen Year Subordinated Debentures for which it has received an underwriting discount of $36,587,500; $150,000,000 in junior debentures for which it has received an underwriting discount of $7,500,000, for a total in principal amount of $2,500,000,000, ("the Debt Financing"). Claimant has reason to believe that Debtor had re-sold some of the Debt Securities to partnerships consisting of Debtor's employees.

Funds from the Debt Financing were applied towards the purchase by BCI of Beatrice common stock owned by the claimants which was listed on the New York Stock Exchange through April 17, 1986. The financing of such purchases was in violation of Regulation G under Section 7 of the Securities Exchange Act

of 1934. Section 29 of the Act voids any transaction effected in violation of Regulation G. $40 per common share, or $4,553,626,600 was paid out by BCI for the purchase of such shares, with funds provided, in part, by the Debtor's aforesaid underwritings.

The Debtor was prohibited from purchasing the aforementioned securities from BCI by Section 7(a)(1) of the Investment Company of 1940 because BCI had not registered as an investment company pursuant to the requirements of Section 8 of that Act, nor was it exempted from such registration by order entered in accordance with the procedures and provisions of Sections 3(b)(2) or 6(c) of that Act. Section 47 of the Act voids any contract made in violation of such Sections.

Claimants have been deprived of a

substantial portion of their equity in Beatrice as a result of Debtor's unlawful acts. 1/

4. (a) The claim is founded on BCI's two prospectuses dated April 10, 1986 covering the Senior Notes, the Senior Subordinated Debentures and the Subordinated Debentures. The cover of each such prospectus is attached. Each such prospectus includes more than one hundred pages. Any private offering memorandum that may cover the junior debentures is not available to claimant at this time.

(b) The claim is also founded on BCI's prospectus of March 11, 1986 which was false, misleading and omitted to state material facts necessary to have been stated therein in order not to make the other statements therein made false and misleading, for example:

(i) that warrants for the purchase of BCI Holdings common stock would be purchased by partnerships consisting of Drexel employees;

(ii) that Beatrice would be liquidated and dissolved by May 26, 1986, when it was actually liquidated and dissolved;

(iii) that "no federal or state regulatory requirements remained to be complied with in order to consummate the merger" when, in fact (x) registration of BCI under the 1940 Act had not been made nor had an exemption from the registration requirement been secured, (y) the Debt Financing had not been submitted to the Federal Reserve Board for approval in accordance with Regulation G under Section 7 of the Securities Exchange Act of 1934 and (z) the Bank Financing consisting of

$3,500,000,000 had not been submitted to the Federal Reserve Board for approval in accordance with Regulation U under Section 7 of the 1934 Act.

(iv) that American Brands, Inc. ("AMB") would have been a buyer of 15 Beatrice businesses for a total of about $2,700,000,000 if such businesses had been offered to AMB; in fact, the said businesses were sold, in July, 1987, to E-II Holdings, Inc., a $1,000 corporation formed by Kohlberg, Kravis, Roberts & Co. ("KKR"), BCI's alter ego, for $1,067,542,000 including $476,230,000 as and for "intangible assets".

The Debtor is held liable for any such omission or misstatements by Section 5 of the Securities Act of 1933.

5. Not applicable

6. Not applicable except that

claimant's objections against the consummation of the Beatrice-BCI merger were not heard on the merits by the Delaware courts. Claimant had filed objections with the Delaware Chancery Court at Wilmington, Delaware against the consummation of the Beatrice-BCI merger.

The merger was approved over claimant's objections on April 16, 1986 and became effective on April 17, 1986.

7. No judgment has been rendered on the claim.

8. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim/interest.

9. This claim/interest is not subject to any setoff or counterclaim.

10. No security interest is held for this claim.

11. This claim is an unsecured claim.

12. This claim has not been obtained by claimant on assignment.

Name of Claimant : William Leighton, on behalf of himself and all other persons similarly situated, ("the class"), as above defined.

Signature : /s/ William Leighton

Address : 249 West 11th Street,
New York, N.Y. 10014

Telephone : (212) 255-0001

Date :November 10, 1990

To : The Drexel Burnham Lambert Group, Inc.
P.O. Box 95
Bowling Green Station
New York, N.Y. 10274-0095

1/ In toto, these acts constituted a manipulative and deceptive device and contrivance in violation of Section 10(b) of the 1934 Act and Rule 10b-5 thereunder. Section 29 of the 1934 Act voids any contract made in violation of other Sections and of rules and regulations thereunder.

Filed : November 13, 1990

U.S. Bankaruptcy Court, S.D.N.Y.

UNITED STATES BANKKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Proof of Claim/Interest. No. 6557

In re : Drexel Burnham Lambert Incorporated 90 B 11646

Name of Debtor Company :

Drexel Burnham Lambert Incorporated

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1. Name of claimant: William Leighton, 249 West 11th Street, New York, N.Y. 10014, (212) 255-0001, on behalf of himself as a shareholder of record of American Brands, Inc. a Delaware corporation ("AMB") and on behalf of all persons similarly situated, ("the class").

Amount of Claim Asserted by claimant on behalf of the class:

$54,375,000 (fifty-four million three hundred and seventy-five thousand United States dollars). Number of AMB common shares owned by the class on March 9, 1990 : approximately 95,843,040.

Claimant's Social Security Number : 094-30-3098.

2.(a) The Debtor was, at the time of the filing of the petition initiating this case and still is, liable to the claimant class in the sum of $54,375,000 with respect to the "junk bonds" hereinafter described under paragraph 3(a).

(b) The Debtor was, at the time of the filing of the petition initiating this case and still is, liable to the claimant class in the sum of $2,776,850 with respect to the 3,515,000 shares of the common stock of E-II Holdings, Inc.

underwritten by Debtor on July 2, 1987 for which Debtor has received an underwriting discount of $.79 per share, for a total of $2,776,850. See paragraph 3(b).

3.(a) The consideration for this ground of liability is as follows :

On July 2, 1987, Debtor has underwritten two issues of "junk bonds" of E-II Holdings, Inc., a Delaware corporation, ("E-II") in the amount of $750,000,000 each for which it has received underwriting discounts as follows : $26,250,000 with respect to the 12.85% Senior Subordinated Notes due 1997 and $28,125,000 with respect to the 13.05% Subordinated Debentures due 1999. Debtor was the sole underwriter of these two issues and purchased their entire principal amount from E-II. Claimant has reason to believe that Debtor may have

sold some of the Debt Securities to limited partnerships consisting of some of Debtor's employees. At May 15, 1987, the capitalization of E-II consisted of $1,000.00.

Debtor purchased these issues from E-II in violation of Section 7(a)(1) of the Investment Company Act of 1940 with the knowledge that E-II would use the proceeds for the purpose of purchasing listed stock in violation of Regulation G under Section 7 of the Securities Exchange Act of 1934. Section 29 of the 1934 Act voids any transaction effected in violation of any provision of the Act and the rules and regulations thereunder.

On July 25, 1987, E-II and certain affiliated persons and entities filed a Schedule 13D with the SEC (the "E-II Schedule 13D") reporting beneficial

ownership by E-II of 7,076,800 shares (or about 6.4%) of the common stock of AMB. The E-II Schedule 13D was carefully crafted to create the misleading impression that E-II was curently engaged in an extensive open market program to quickly acquire up to 24.9% of the common stock of AMB.

The Debtor was prohibited from purchasing the aforementioned securities from E-II by Section 7(a)(1) of the Investment Company of 1940 because E-II had not registered as an investment company pursuant to the requirements of Section 8 of that Act, nor was it exempted from such registration by order entered in accordance with the procedures and provisions of Sections 3(b)(2) or 6(c) of that Act. Section 47 of the Act voids any contract made in violation of such Sections.

Claimants have been deprived of a substantial portion of their equity in AMB as a result of Debtor's unlawful acts, namely $247,153,000. The loss occurred when AMB, feeling itself threatened by E-II's accumulation of its stock, agreed in February, 1988 to pay, and did pay, $17.05 for each share of E-II instead of $13 as tendered for on January 22, 1988. By making such tender offer, AMB removed E-II's threat to its independence. The cover page of AMB's original tender offer, on 35 pages, is attached,

In order to preserve its independence, on January 25, 1988, AMB also made a tender offer for all of the "junk bonds" underwritten by Debtor, at 103% of the principal amount of the Senior Subordinated Notes and at 104% of the principal amount of the Notes. The

cover page of this tender offer is also attached. The total amount of capital required for these purchases came to $1,552,500,000 the borrowing of which cost AMB substantial fees. Because the minimum condition (51% of the outstanding "junk bonds") had not been satisfied, AMB did not purchase any "junk bonds" and is being sued in the United States District Court for the Southern District of New York by the holders of some $500,000,000 in principal amount of such bonds for alleged violations of the securities laws. No such suit would have been possible if Debtor had not underwritten the "junk bonds".

AMB's payment of $17.05 per E-II share is the result of a manipulative device and contrivance, in violation of Section 10(b) of the Securities Exchange

Act of 1934 and Rule 10b-5 thereunder, which had the object of forcing AMB to pay $17.05 per E-II share instead of $13 under the threat posed by E-II's intentions with respect to AMB, as disclosed in the E-II Schedule 13D. The threat would not have materialized and AMB's stockholders' equity would not have been diminished by $247,153,000 if Debtor had not underwritten E-II's debt offerings.

(b) On July 2, 1987, Debtor has participated, to the extent of 3,515,000 shares, in the underwriting of an initial public offering of the common stock of E-II Holdings, Inc. ("E-II"). On the day of its incorporation, E-II had a capitalization of $1,000.00. The purpose of E-II's creation was to acquire from BCI Holdings Corporation 15 Beatrice businesses and to force

American Brands, Inc.,("AMB") in February, 1988, to purchase these businesses at an inflated price. In fact, on February 20, 1988, AMB did purchase E-II at $17.05 per common share in a tender offer which had originally been for $13 per share.

Debtor knew, or should have known, that the creation of E-II was a manipulative and deceptive device and contrivance, conceived in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5 thereunder for the purpose of inflating the price at which the 15 Beatrice businesses were ultimately sold to AMB. Section 29(b) of the 1934 voids the underwriting contract pursuant to which Debtor has realized profits from that underwriting.

4. The claim is founded on E-II's prospectus dated July 2, 1987 with

respect to the Senior Subordinated Debentures and the Subordinated Debentures (on more than one hundred pages) and on another prospectus (on 68 pages) relative to the issuance of 23,000,000 shares of E-II common stock in an Initial Public Offering of which Debtor has underwritten 3,515,000 shares. The cover page of each such prospectus is attached.

5. Not applicable

6. Not applicable except that claimant's objections to the consummation of the AMB - E-II merger were not heard on the merits by the Delaware courts. Claimant had filed objections to the consummation of the AMB - E-II merger with the Delaware Chancery Court at Wilmington, Delaware. Claimant is also seeking to intervene in the pending lawsuit by certain

bondholders against AMB, see supra, page 3, first paragraph.

The merger was approved over claimant's objections on October 28, 1988.

8. Not applicable.

9. This claim/interest is not subject to any setoff or counterclaim.

10. No security interest is held for this claim.

11. This claim is an unsecured claim.

12. This claim has not been obtained by claimant on assignment.

Name of Claimant : William Leighton, on behalf of himself as a shareholder of record of American Brands, Inc. and all other persons similarly situated.

Signature : /s/ William Leighton

Address : 249 West 11th Street
New York,, N.Y. 10014

Telephone : (212) 255-0001

Date : November 8, 1990

To : The Drexel Burnham Lambert Group, Inc.
P.O. Box 95
Bowling Green Station
New York, N.Y. 10274-0095

Supreme Court, U.S.
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No. 92-1219

In The

Supreme Court of the United States

October Term, 1992

WILLIAM LEIGHTON,

Petitioner,

vs.

THE DREXEL BURNHAM LAMBERT GROUP, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Did the Court of Appeals for the Second Circuit properly dismiss Petitioner's appeal for lack of standing on his appeal from the Order of the District Court denying his motion to intervene?

II. Did the Court of Appeals for the Second Circuit properly impose upon Petitioner sanctions and a limited form of injunctive relief?

III. Whether this Court should award Respondents damages and costs for the filing herein by Petitioner of a frivolous petition for a writ of certiorari.

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No. 92-1219

In The

Supreme Court of the United States

October Term, 1992

WILLIAM LEIGHTON,

Petitioner,

vs.

THE DREXEL BURNHAM LAMBERT GROUP, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF JURISDICTION

The Petitioner seeks review of the order dated September 17, 1992, of the United States Court of Appeals, Second Circuit, dismissing his appeal, imposing sanctions, and granting limited injunctive relief against Petitioner. Because Petitioner has failed to demonstrate either the existence of a conflict among the Circuit

Courts, or the existence of an important question of federal law which has not been, but should be settled, by this Court, *see* Sup. Ct. R. 10.1(a)-(c), no jurisdictional basis has been established for granting the petition for writ of certiorari.

STATUTORY PROVISIONS AND RULES INVOLVED

F.R.A.P. Rule 38. *Damages for Delay*

> If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

U.S.S.Ct. Rules, Rule 42.2. *Damages*

> When a petition for a writ of certiorari, an appeal, or application for other relief is frivolous, the Court may award the respondent or appellee just damages and single or double costs. Damages or costs may be awarded against the petitioner, appellant, or applicant, or against the party's attorney or against both.

28 U.S.C. § 1912. *Damages and costs on affirmance.*

> Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.

28 U.S.C. § 1927. *Counsel's liability for excessive costs*

> Any attorney or *other person* admitted to conduct cases in any court of the United States

> or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. §1654. *Appearance personally or by counsel*

> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

STATEMENT OF THE CASE

A. Introduction

The Petitioner, William Leighton *pro se* ("Leighton"), who is not an attorney, has a long history of filing frivolous, delaying, and vexatious petitions and motions *pro se* in this Court. Spanning the more than thirty-eight years of his *pro se* activities, Leighton has previously filed *pro se* in this Court no less than ten petitions for a writ of certiorari, four petitions for rehearing, and six motions relating thereto, and all of those fourteen petitions were denied (RA-90-92).[1]

Now, Leighton *pro se* again comes to this Court on his eleventh petition for a writ of certiorari after presenting during the past six years to the following seven Courts (including this Court)

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1. References to respondents' appendix will be "RA__"; references to petitioner's appendix will be "A__"; and references to the petition will be "P__".

the same type of meritless and frivolous arguments, objections, motions and appeals, all revolving about the same two transactions (*i.e.*, the 1986 merger takeover of Beatrice Companies, Inc. ("Beatrice") and the 1987-1988 takeover contest for American Brands, Inc. ("American Brands"), and all of which have been consistently rejected or denied by the seven Courts (RA-2-3, 17-19, 53-54, 64-66, 102-104):

> The Delaware Chancery Court (at least eight opinions or orders);
>
> The Supreme Court of Delaware (at least ten decisions or orders);
>
> The Supreme Court of the United States (denial of two of Leighton's petitions for certiorari, one of his petitions for rehearing, and his motion to defer consideration of his petition for certiorari) — 111 S. Ct. 1020 (1991); 484 U.S. 971 (1987); 484 U.S. 898 (1987) (RA-65, Items 1, 3 and 4);
>
> United States Bankruptcy Court, Southern District of New York (at least three opinions or orders);
>
> United States District Court, Southern District of New York (at least nine opinions or orders);
>
> United States Court of Appeals, Second Circuit (at least eight rulings or orders); and
>
> United States Court of Appeals, Seventh Circuit (at least one order).

As discussed, *infra*, these frivolous and obstructionist activities covered his attempted *pro se* interposition in *Beatrice* and *American Brands* litigations ultimately settled over his

objections in the Delaware Courts with the attending denial of his petitions to this Court (RA-65); (b) his attempted *pro se* intervention in the *American Brands* bondholders litigation[2] in the New York Federal Court involving on his part multiple motions, appeals to the Second Circuit, and objections to the settlement of that litigation which was approved and the case dismissed; (c) his filing *pro se* of two Proofs of Claim on behalf of himself and the same purported Beatrice and American Brands stockholders classes in the Drexel Chapter 11 proceedings in Bankruptcy Court (S.D.N.Y.) and his meritless and frivolous motions and objections in the Bankruptcy Court and the District Court in those proceedings; and (d) finally, his attempted intervention *pro se* (on the same individual and class basis) in the Milken Global Settlement in the District Court (S.D.N.Y.), his appeal from the denial of that motion, his various motions on appeal, and the dismissal of his appeal for lack of standing from which he has filed his instant petition for a writ of certiorari on behalf of himself and the same purported stockholder class.

B. Leighton's Proofs of Claim

On November 13, 1990, Leighton filed *pro se* two Proofs of Claim in the Chapter 11 proceedings of Drexel Burnham Lambert, Inc. ("Drexel Inc.").

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2. Leighton sought to intervene in *Forstmann Leff Securities, Inc., et al. v. American Brands, Inc., et al.*, 88 Civ. 4485 (JMC-S.D.N.Y.). The denial of his intervention motion on the holding that he had no interest in the bondholders' action, was followed by a series of Leighton's motions for rehearing, appeals, motion for rehearing on appeal, motion for a stay of his own appeal in the Second Circuit, and his unsuccessful attempt to interject himself in an Indenture Trustees action and an appeal in *Harris Trust and Savings, et al. v. E-II Holdings, Inc.*, 722 F. Supp. 429 (N.D. Ill.E.D.) 1989), *aff'd*, (case dismissed) 926 F.2d 636 (7th Cir. 1991). His delaying and vexatious activities in those litigations were all meritless, frivolous, and rejected.

Leighton's Proof of Claim No. 6532 (A 135-144) was filed on behalf of himself as a former shareholder of Beatrice and "on behalf of all persons who had bought their shares of the common stock of Beatrice before April 17, 1986, the Effective Time of the Merger of Beatrice and BCI Holdings Corporation . . ." This Proof of Claim revolved about the merger takeover of Beatrice and related transactions.

His Proof of Claim No. 6557 (A 145-156) was filed on behalf of himself as a shareholder of record of American Brands and "on behalf of all persons similarly situated". This Proof of Claim related to the takeover contest between American Brands and E-II Holdings, Inc. ("E-II Holdings") and American Brands' counter-tender offer for E-II Holdings securities.

These two Proofs of Claim represent Leighton's attempt to recycle his abusive and frivolous activities in the Delaware Chancery Court and the Delaware Supreme Court in the respective *Beatrice* and *American Brands* class and derivative litigations brought in the Delaware Chancery Court, each of which was settled and judicially approved upon findings of fairness and substantial benefits inuring to the classes and successors in interest. Leighton and the classes he has purported to represent in his Proofs of Claim took the fruits of these highly beneficial settlements (RA-9-13).

By filing the Proofs of Claim and pursuing these claims in the Drexel Chapter 11 proceedings, Leighton has violated the Chancery Court's injunctions against further prosecution of the same claims contained in its Final Orders and Judgments approving the *Beatrice* and *American Brands* settlements, and he is in contempt of the Delaware Chancery Court. Those injunctions encompass Leighton and the purported class members referred to in the Proofs of Claim (RA-9-13).

C. Leighton's Activities in the Delaware Litigation

Following his usual practice, Leighton purchased a nominal number of Beatrice and American Brands shares of common stock (10 shares each), and in each case, after the alleged key transactions complained of had occurred, and after class and derivative litigations were instituted in the Delaware Chancery Court. He embarked upon exhaustive, meritless, vexatious and frivolous motions, objections and appeals in the Delaware Chancery Court, Delaware Supreme Court, and the United States Supreme Court. As referred to above, Leighton on three separate occasions unsuccessfully sought review of the *Beatrice* settlement in the United States Supreme Court — 484 U.S. 898 (1987) (*cert. denied*); 484 U.S. 971 (*rehearing denied*); 111 S.Ct. 1020 (*cert. denied*). In both the *Beatrice* and *American Brands* litigations, Leighton was found by the Delaware Courts to lack standing (RA-9-13, 17-19, 64-65, 102-104).

In the *Beatrice* litigation, the Delaware Supreme Court imposed sanctions against Leighton, and by reason of his obstructionist tactics it took three years and four additional orders of the Delaware Supreme Court to assess the amount of sanction damages (RA-18 (Exh. S)). The last Delaware Supreme Court order assessing the damages is dated September 7, 1990. Leighton then ambulated to the New York Federal judicial system and filed his two Proofs of Claim on November 13, 1990, to start his *Beatrice* and *American Brands* tactics once again.

D. Leighton's Activities in the Drexel Chapter 11 Proceedings

By November 15, 1990, the time bar date for filing Proofs of Claim in the Drexel Chapter 11 proceedings, more than 15,000 claims of unsecured creditors were filed. After eliminating those which were clearly defective, the Fixed Creditors' claims (including those on the Debtors' undisputed scheduled claims)

aggregated approximately $2.5 billion. Based on the Proofs of Claim of those who filed unliquidated, contingent Securities Litigation Claims that had an uncertain value, those claims amounted to more than $20 billion. The book value of the Debtors' assets as at June 1991 amounted to approximately $2.4 billion, with work-out over a number of years necessary to realize significant value for many illiquid positions. Under these circumstances, an overall settlement of the Securities Litigation Claims with the Debtors was essential to avoid the alternative of conversion to a Chapter 7 liquidation with attending major losses in value for all creditors (A 92-116).

There ensued extensive and intensive negotiations among the four official committees, the Debtors, and the Securities Litigation Claimants who were represented by four highly experienced representatives (including counsel for the FDIC/RTC having claims of approximately $11.3 billion) appointed by the District Court. These negotiations culminated in the Securities Litigation Claims Settlement Agreement dated May 3, 1991 ("SLC Settlement Agreement"). The two groups sharing the Debtors' net assets are the mandatory class (the "Class") of all Securities Litigation Claimants and the Fixed Creditors. Two Subclasses of Securities Litigation Claimants will share the settlement percentages allocated to the Class: 75% to Subclass A, which includes claims of the FDIC/RTC, and 25% to Subclass B. It is estimated that Subclass B's allocable share will be approximately $202.5 million. Subclass A's allocable share will be approximately $607.5 million, with the FDIC/RTC allocated 60% of Subclass A or $364.5 million and the other Subclass A claimants 40% or $243 million (A 12-17, A 116-135).

The SLC Settlement Agreement also provides for pooling by Subclass A members of their claims against Drexel-related third parties with those of the Debtors' claims against such third parties, with revenues to be shared Subclass A members (86%) and the Fixed Creditors (14%). The Subclass B claimants did not agree to

pool and were able to prosecute their own claims against third parties without sharing revenues with the Fixed Creditors. The SLC Settlement Agreement in conjunction with Sections 12.2 and 12.3 of the Second Amended and Restated Joint Plan of Reorganization for the Debtors under Chapter 11 ("Debtors' Plan of Reorganization") provides upon consummation of the Debtors' Plan of Reorganization for implementation of Release and Injunctive Provisions of Identified Officers, Directors and Other Parties and Identified Settling Parties (as defined in the Plan)[3], except as are named defendants in a litigation where a Securities Litigation Claimant is a plaintiff which was pending as of May 3, 1991, unless such Claimant consents to such release (RA-4). In other words, if a Securities Litigation Claimant had instituted an underlying securities lawsuit against any of such officers, directors or Identified Settling Parties prior to May 3, 1991, the Release and Injunction provisions would not apply unless such Claimant consents to such release and injunction.

Leighton's Securities Litigation Claims pursuant to his two Proofs of Claim were classified as Subclass B claims. Consequently, he had the right and standing to participate as a Subclass B claimant in the District Court hearing on the fairness, reasonableness and adequacy of the SLC Settlement Agreement. The hearing was held on August 9, 1991, before Senior Judge Milton Pollack and Bankruptcy Judge Francis G. Conrad, after individual notices were mailed to more than 161,000 class members, in addition to widespread published notice. Leighton appeared and filed objections to approval of the settlement, and

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3. Identified Settling Parties encompass those Persons (individuals and entities as defined) who have made a settlement with the Pool Administrators after May 3, 1991 (the date of the SLC Settlement Agreement), which the District Court, on or prior to the Confirmation Date, on notice to the Plan Proponents and such others as the District Court may direct, and offer an opportunity to be heard, has found to provide a material benefit to the Debtors' estates and to consummation of the Plan.

was heard at the settlement hearing. The District Court and the Bankruptcy Court overruled all objections, *In re The Drexel Burnham Lambert Group, Inc.*, 130 B.R. 910 (S.D.N.Y. 1991), approved the SLC Settlement Agreement as fair, reasonable and adequate, pursuant to Order dated August 9, 1991 and August 20, 1991 Decision, Findings of Fact and Conclusions of Law (RA-3-4).

Leighton did not appeal from the order approving the SLC Settlement Agreement. The few other objectors, also Subclass B claimants, did appeal to the Court of Appeals, Second Circuit. In a comprehensive decision on March 27, 1992, the Court of Appeals affirmed the approval of the SLC Settlement Agreement, *In re The Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992) (A 11-44; RA-3-4).

In the meantime, proceedings regarding the Debtors' Plan of Reorganization were before the Bankruptcy Court. Leighton appeared before that Court at various hearings leading to the confirmation hearing held on March 5, 1992. He filed objections and orally objected to the confirmation of the Plan. The Bankruptcy Court overruled objections to the Release and Injunction provisions at a February 13, 1992 pre-confirmation hearing, and then entertained and again overruled, at the confirmation hearing itself on March 5, 1992, all the objections. The Bankruptcy Court issued a 37-page Order on March 9, 1992 confirming the Plan, supported by a 121 page memorandum of decision, which expressly reconfirmed under bankruptcy law the validity of the underlying SLC Settlement Agreement, the Release and Injunction Provisions of the Plan, and the unimpaired status of the settled claims of the Class (RA-5, 55).

Leighton did not appeal from the Confirmation Order (RA-5, 55).

As indicated above, the Court of Appeals rendered its decision on March 27, 1992, after the Confirmation Order of March 9, 1992, affirming approval of the SLC Settlement Agreement and approved the Injunction Provisions and the Pooling Provisions of the SLC Settlement Agreement. 960 F.2d, p. 293 (A 41-43).

E. The Global Settlement

The Global Settlement is the result of intensive negotiations over a span of five months culminating in the District Court hearing held on March 9, 1992. Drexel brought suit through the Pool Administrators against Michael Milken ("Milken") and his brother Lowell Milken, for breach of fiduciary obligation and misappropriation of corporate opportunities, and against approximately two hundred other Settling Participants for receipt of large bonuses before the Drexel bankruptcy and for misappropriation of corporate opportunities through the use of various partnerships. Also the FDIC/RTC actions and other class and derivative actions (predominately Subclass A claimants) included in the pooling were pending. In addition a larger number of actions were brought and pending throughout the country by other claimants (including most of the major Subclass B claimants) against Milken and other of the Settling Participants likewise seeking huge recoveries. Included in such other claims is the class action of *Presidential Life Insurance Co. v. Milken, et al.*, 92 Civ. 1151 (MP) (S.D.N.Y.) ("*Presidential Life Class Action*") brought on behalf of all those who as of February 4, 1992, had existing but unasserted Drexel-related claims against any of the Settling Participants (RA-5-7, 67).

The Global Settlement is the consequence of the realization that the claims being settled had not been proved at trial, and were being strongly defended, and that the courts all over the country would have to deal with endless litigation involving many years of costly litigation trying to resolve complex and difficult issues (RA-68).

The District Court closely monitored these negotiations. The Settling Participants and the Claimants were each separately represented in the settlement discussions through liaison counsel who coordinated with their various constituencies. On the Claimants' side of the negotiations were the Pool Administrators (Cravath, Swaine & Moore, and Milberg Weiss Bershad, Spechtrie & Lerach), and Berger & Montague, P.C. and Wolf Popper Ross Wolf & Jones who serves as liaison to counsel in the non-pooling cases (RA-68-69).

Under the terms of the Global Settlement Stipulation dated as of March 9, 1992, a total of $1.3 billion in consideration will be made available for distribution to the claimants, consisting of $500 million in new payments by Milken, the consent by Milken to the release of over $400 million in the Milken Civil Disgorgement Fund created in his settlement with the SEC, $300 million from the Other Settling Participants, and $100 million approximately from the various insurance proceeds (RA-69-70).

The benefits to Drexel are substantial: (a) under the Pooling arrangement, the Drexel Fixed Creditors will receive out of the Pooled Recoveries more than $84 million, (b) more than $600 million in claims filed against Drexel will be released, (c) potentially significant contribution and indemnity claims filed against Drexel will be released, (d) claims against settling partnerships in which Drexel has an interest will be released, thereby removing a significant obstacle to Drexel realizing on its interest in those partnerships, which has a value of over $200 million, (e) Milken and Lowell Milken release their Class 6 Claims, thereby facilitating implementation of the Employee ERISA Compensation Claims Settlement which is an integral part of the Plan of Reorganization, and (f) the settlement of the Drexel litigation claims will remove significant time-consuming burdens from employees of the DBL Liquidating Trust created under the Plan of Reorganization (RA-71-72).

In consideration of their contributions to the Global Settlement, the Settling Participants are receiving various protections against pending and potential claims, including, *inter alia*, the following: (a) Drexel will release claims against the Settling Participants, (b) the Release and Injunction Provisions of the Plan of Reorganization are to be applicable, (c) all claimants with pending actions against the Settling Participants will sign the Global Settlement Stipulation, which includes as one of the actions the *Presidential Life* Class Action, and (d) creation of an indemnity fund of up to $50 million as an indemnity for any unresolved claims, including any opt-outs from the *Presidential Life* Class Action (RA-70-71).

On February 14, 1992, a joint motion by Drexel and the Pool Administrators was made to approve the Drexel Settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and to designate the Settling Participants as Identified Settling Parties. After notice was sent to the 7,700 participants in the Drexel bankruptcy including Leighton, the District Court at the hearing held on March 9, 1992 considered all objections, including the objection of Leighton, and granted the motion and approved the Global Settlement and the designation of the Settling Participants as Identified Settling Parties (RA-00). This Order of March 9, 1992 (as amended by Orders dated March 23, 1992 and April 24, 1992 revising the list of Identified Settling Parties) approved only the settlement of Drexel's claims and the designation of the Identified Settling Parties. It did not approve a settlement of the *Presidential Life* Class Action or the settlement of any of the pending other class or derivative actions against Identified Settling Parties. These conditions to the effectiveness of the Global Settlement required separate subsequent proceedings (RA-5-6, 56-57; A 59-71, 78-84).

F. The Presidential Life Settlement

The *Presidential Life* Class Action, commenced on February

18, 1992 as a Global Class Action, was settled whereby up to $50 million of the Global Settlement contributions were negotiated to be available for distribution to members of the *Presidential Life* class who file valid Proofs of Claim and have not excluded themselves from the class. World-wide notice both individual and publication was given to the putative class members of the Stipulation of Compromise and Settlement dated March 11, 1992 ("*Presidential Life* Settlement") and the settlement hearing scheduled for July 14, 1992. The Court approved the settlement after the July 14, 1992 hearing and issued its Findings of Fact and Conclusions of Law and entered its Order and Final Judgment of July 17, 1992, approving the *Presidential Life* Settlement. If Leighton had any existing claim but unasserted claim against Milken or any of the other Settling Participants, he could have filed a Proof of Claim in the *Presidential Life* Settlement (RA-6-7). Instead he filed a Request for Exclusion from the *Presidential Life* class (RA-75-77) which was granted and recognized as an opt-out by the Court at the July 14, 1992 hearing (RA-78-79).

G. The Approval of the Settlements in MDL 924 of the Pending Class and Derivative Actions Pursuant to the Global Settlements

The District Court approved the settlements of the various Federal class and derivative actions transferred by the Judicial Panel of Multidistrict Litigation to the Southern District of New York (MDL 924-District Court Senior Judge Milton Pollack) for pretrial purposes, after extensive individual and publication notice and rights to request exclusion at a settlement hearing held on November 17, 1992.

Leighton was not involved in this settlement proceeding, since he had not brought any underlying class or derivative litigation against Milken or any of the other Settling Participants prior to February 4, 1992 or at any time.

H. Leighton's Motion to Intervene in the Drexel Chapter 11 Proceedings

Leighton filed a motion in the District Court on March 26, 1992 to intervene in the Drexel Chapter 11 proceedings for the purpose, as he states in his motion, of appealing the final decision of this Court consisting of the Decision and Order of August 20, 1991 (approving the SLC Settlement Agreement) and the Order of March 9, 1992, as subsequently amended (approving the Global Settlement). His sham and frivolous reason for the application is the decision of *Marino v. Ortiz*, 484 U.S. 301 (1982) (A46).

The hearing on the motion was held on April 10, 1992, and it was abundantly clear that Leighton was irresponsibly attempting through a "side door" to raise once again an appeal of the SLC Settlement Agreement, ignoring its approval by both the Bankruptcy Court and the District Court and his failure to have appealed from its approval. His position was shown to be totally a frivolous device and meritless at the hearing. Since he was a Subclass B claimant, he did not have to "intervene" in the Drexel Chapter 11 proceedings so that the *Marino* case was totally irrelevant; he was a party in interest. Secondly, he had no protectable interest in the Drexel and Pool Administrators' actions against the Settling Participants and the ensuing Global Settlement. He brought no underlying action against Milken or any of the other Settling Participants (RA-47-60).

While Leighton in his intervention papers before the District Court and the Court of Appeals on his appeal attempted to fuse together the SLC Agreement and the Global Settlement, he took just the opposite position at the April 10 hearing: "As is very clear from the appellate court's decision, its decision is based on the settlement agreement of May 3, 1991. It has nothing to do with the global agreement of March 9th as amended by order of March 23. My position is that constitutes a separate and distinct matter which

the appellate court has not addressed." (RA-48).[4] The District Court denied his motion to intervene by Order dated April 16, 1992 (A 58).

I. Leighton's Appeal to the Second Circuit

On April 22, 1992, Leighton filed a Notice of Appeal from the April 16, 1992 Order denying his motion to intervene. Leighton filed an Amended Notice of Appeal on May 8, 1992.[5]

The Appellees filed a Brief in Opposition to Leighton's appeal. The co-counsel for the Subclass B Representatives, Subclass B, and Other Claimants in the Global Settlement moved to dismiss Leighton's appeal for lack of standing, and for sanctions and limited injunctive relief. A comprehensive record was used on the dismissal motion (RA-16-21). Leighton had ample notice of the motion panel's scheduling the oral argument for September 15, 1992, and Leighton interposed three affirmations in opposition (RA-22-46) and argued orally before the Panel. The Court of Appeals Order of September 17, 1992, granted the motion to dismiss, imposed sanctions, granted limited injunctive relief, and denied his cross motions (A 1-3). It is from this Order that Leighton has filed his petition for certiorari.

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4. Leighton filed his motion to intervene one day *before* the Court of Appeals affirmance on the SLC Settlement Agreement and the Pooling and Injunction Provisions. Moreover, in connection with the Pooling Provisions the Court of Appeals took judicial notice of the Global Settlement approval of March 9, 1992. 960 F.2d at 289, fn. 2.

5. At the Court Appeals level, Leighton embarked upon a plethora of motions — motion to remand heard by the panel after briefing and transferred the motion to the appeals panel for decision; motion to extend time to file Appellant's Brief and Appendix — denied; motion to consolidate with other appeals from the Global Settlement — denied; motion to add exhibits to his Brief; and motion for sanctions against Appellees — denied (A 3).

J. Leighton's Current Status Under the SLC Settlement Agreement and the Plan of Reorganization

For purposes of allocation processing and distribution of the Subclass B Settlement Fund, the District Court appointed the Subclass B Executive Committee to prepare a Plan of Allocation (which has been approved by the District Court) for evaluation and allocation purposes, subject to Court approval of the evaluation and allocation.

In connection with Leighton's Proofs of Claim, the Subclass B Executive Committee moved to limit his two Proofs of Claim to his own individual claims and to disallow his asserted class claims on a number of grounds, including lack of authority from the purported class members, subjecting the purported class members to contempt of the Delaware Chancery Court, lack of capacity as a class representative, and violating 28 U.S.C. § 1654 by pleading and conducting the case *pro se* for other persons. After hearing, the Court granted the motion by Order dated November 12, 1992 and has limited the Proofs of Claim to his own individual claims. Leighton's individual claims asserted in the Proofs of Claim are now being processed by the Subclass B Executive Committee.

In connection with the Global Settlement and *Presidential Life* Settlement, Leighton's Request for Exclusion from the *Presidential Life* class has similarly been limited to himself, so that the opt-out is his own step only. Leighton had no authority to opt-out those purported class members, they did not seek themselves to opt-out, they also were similarly vulnerable to Delaware Chancery Court contempt charges, and once again Leighton was in violation of 28 U.S.C. § 1654.

SUMMARY OF ARGUMENT

The record before the Court of Appeals fully established that Leighton had no standing to appeal. He either failed to appeal and

was time barred; and in any event the Court of Appeals had previously decided the subject matter of his appeal, he had no protectable interest; and he voluntarily opted-out. The sanctions and limited injunctive relief imposed by the Court of Appeals are well within the statutory and inherent rights of that Court in the light of Leighton's irresponsible conduct and frivolous activities. Leighton's position here is just another example of his frivolous appeals and his irresponsibility in causing needless delays, expenses and wasteful consumption of judicial time and resources. Damages should be imposed.

REASONS FOR DENYING THE WRIT

I.

THE COURT OF APPEALS FOR THE SECOND CIRCUIT PROPERLY DETERMINED THAT PETITIONER LACKED STANDING TO APPEAL TO THAT COURT.

Through his motion to intervene, Leighton sought to open the door to his frivolous and misconceived attack on the SLC Settlement Agreement and the March 9, 1992 Order (as amended) approving the Global Settlement as to Drexel's settlement and the Release and Injunction findings as to the Settling Participants. He extended his meritless arguments also to the *Presidential Life* class settlement.

He clearly had no standing to appeal:

(1) Leighton objected to the approval of the SLC Settlement Agreement. He was entitled to object as a member of Subclass B. He did not appeal from the Order approving the SLC Settlement Agreement. Leighton is time barred from appealing from the SLC Settlement Agreement approval. He cannot bootstrap an appeal via his intervention motion. Moreover, he was seeking to appeal

on issues that the Court of Appeals had already ruled upon adversely to Leighton's contentions.

(2) Leighton has no "significantly protectable interest" in the Drexel and Pool Administrators action against Milken, et al., and the ensuing Global Settlement. *Donaldson v. United States*, 400 U.S. 517, 531, 91 S. Ct. 534, 542, 27 L. Ed. 2d 580 (1971). Leighton did not bring any underlying lawsuit against Milken or any of the other Settling Defendants. He is not a party to the action or the Global Settlement. He is not an Other Claimant, that is, claims with underlying lawsuits against Milken and other Settling Participants other than those represented by the Pool Administrators, since he did not have pending any such Drexel-related lawsuit against the Settling Defendants as of February 4, 1992, or for that matter at any time thereafter.[6] Pursuant to the Plan of Reorganization, the Securities Litigation Claimants agreed in the SLC Settlement Agreement to the Pool Recovery provisions and the Release and Injunction provisions of the Plan of Reorganization which were upheld by the Court of Appeals. Leighton has absolutely no stake in the Global Settlement. Moreover, the Order of March 9, 1992, as amended, dealt only with the settlement of the Drexel actions and the designation of the Identified Settling Parties for the Release and Injunction benefits. The Global Settlement provisions as they impacted the claimants' lawsuits including *Presidential Life* were the subject of subsequent settlement proceedings.

(3) Leighton filed objections and orally objected to the Plan of Reorganization at the confirmation hearing. He did not appeal from the March 9, 1992 Confirmation Order. He is time barred to

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6. Leighton misstates the status of the Other Claimants (which includes most of the class and derivative Subclass B actions) by irresponsibly stating that the Other Claimants will not share in the $1.3 billion Global Settlement. To the contrary, through intensive negotiations, they were allocated an aggregate of at least $250 million (RA-6).

raise indirectly or directly any issues relating to the provisions of the Plan of Reorganization dealing with the Release and Injunction Provisions which effectively enjoin Leighton from asserting any claims against the Identified Settling Parties. In this respect, Leighton had no Drexel-related lawsuits against Milken or any of the other Settling Participants prior to March 3, 1991 or at any time thereon (RA-5-26).

(4) He opted out of the *Presidential Life* Class. He therefore has no standing to object to the *Presidential Life* settlement and the District Court's approval of that settlement by Order and Final Judgment dated July 17, 1992 (RA-7, 26, 75-79).

(5) Having failed to pay the sanctions imposed by the Court of Appeals, Second Circuit in *Shenkman v. Revlon*, Docket No. 91-7911 (January17,1992), he as part of the marital unit was precluded from filing any further papers in the Court of Appeals until the sanctions have been paid (RA-7-9, 94).

(6) He violated the Delaware Chancery Court injunctions in the Orders and Final Judgments approving the *Beatrice* and *American Brands* settlements, by filing the Proofs of Claim and continuing to assert Beatrice and American Brands claims (RA-9-13). *See also*, *Abramson v. Pennwood Investment Corp.*, 392 F.2d 759, 762 (2nd Cir. 1968) (collateral estoppel arising from the release in the settlement).

(7) Leighton's attempt to evade giving effect to the findings and the settlements in the *Beatrice* and *American Brands* litigation by conjuring up meritless claims in the Proofs of Claim dealing with the Investment Act and the margin requirements under the Federal Reserve Board regulations and Section 7 of the Securities Exchange Act are unavailing to him. The Securities and Exchange Commission rejected his contentions of violations of the Investment Company Act. There is no right of private remedy

under Section 7 of the Securities Exchange Act. *Bennett v. United States Trust Company*, 770 F.2d 308 (1985). Moreover, the federal courts recognize the preclusive effect of State court decisions. *Murphy v. Gallagher*, 761 F.2d 878, 885-886 (2d Cir. 1985); *Vernitron v. Benjamin* (2d Cir.), *cert. denied*, 91 S. Ct. 1664 (1971) (RA-13).

II.

THE COURT OF APPEALS PROPERLY IMPOSED SANCTIONS AND A LIMITED FORM OF RELIEF AGAINST PETITIONER.

A. Leighton's Background As An Habitual Pro Se Litigant

The frivolous and meritless nature of Leighton's appeal to the Second Circuit and now, to this Court cannot be fully appreciated without consideration of Leighton's persistent abuse of the legal system.

In addition to the amazing number of *pro se* petitions filed by Leighton in this Court over the span of years from 1955, he has plagued the District Courts and Courts of Appeal as well as State Courts with his *pro se* frivolous, vexatious, obstructionist, and meritless motions and applications, objections and appeals in the many shareholder litigations and reorganizations in which he has attempted to intervene, object or otherwise participate — never in furtherance of such litigation or reorganization but to hinder and delay and obstruct. He has been the subject of many sanctions by the Courts and dismissals of frivolous appeals for lack of standing or lack of merit (RA-63-66, 95-107).

The Court of Appeals has long recognized Leighton "as an habitual *pro se* litigant whose claims were often conclusory and lacking in legal merit" and in contempt of orders of the District

Court. *Leighton v. Paramount Pictures Corporation*, 340 F.2d 859, 861 (2d Cir.), *cert. denied*, 381 U.S. 925 (1965). He has been the subject of the Court of Appeals Orders in various cases in which the Court dismissed his appeals and assessed sanctions against him (A 1-3; RA-19, 95-102).

The latest such ruling before the Drexel dismissal was made by the Court of Appeals in *Shenkman v. Revlon*, Docket No. 91-7911 (Jan. 17, 1992) dismissing the Leighton appeal (Leighton and his wife as a "marital unit") and assessing damages (sanctions) of $2,500. (The assessment has not been paid.)

Likewise, in *Dubowski v. Colonial Penn Group, Inc.*, Docket No. 83-7963, the Court of Appeals on January 4, 1984, granted the appellees' motion to dismiss the appeal as frivolous (*Exh. Z*). Leighton sought on that appeal to seek review of various Orders of the District Court denying his motion to amend the judgment, assessing damages of $1,500 against him for vexatious litigation, and denying his request to intervene in the class action brought against Colonial Penn and others, and denying his attempt to object to the settlement of that action. This Court in *Colonial Penn* found that his appeal was "entirely frivolous" and assessed sanctions of double costs and damages of $3,000 in addition to the lower's court's $1,500 assessment (Exh. Z). The history of his subsequent obstructionist tactics over a span of more than seven months in seeking to avoid payment of that assessment is set forth in an Order and Judgment of Judge Kram in the *Colonial Penn* litigation, dated August 22, 1984. By that time he still had not paid the assessment. Judge Kram assessed Leighton an additional $750, and concluded:

> This Court cannot, and will not, tolerate the continued practice by Leighton of filing frivolous motions, flouting orders of this Court and the Second Circuit, and frustrating proper

litigations' rights to obtain satisfaction on their claims and judgments.

For more details of his outrageous conduct as a *pro se* litigant see: the Affidavit of Stanley Nemser, sworn to August 6, 1991 (RA-63-65); the Affidavit of Edward Labaton in the *Revlon* litigation, sworn to July 5, 1990 (RA-95-102); and the profusion of his *pro se* meritless and frivolous motions, objections and appeals in the *Beatrice* litigation (*Exhs. J through S*), in the *American Brands* litigation (*Exhs. T through Y*), in the *Revlon* litigation (*Exhs. BB through EE*), and in *Conway v. Davis* (*Exh. FF*), which were included in the record of exhibits on the motion to dismiss in the Court of Appeals in Drexel (RA-16-21).

Leighton generally acquires only a few shares in the target company after the occurrence of the key events and public announcements of the transactions involved in the class or derivative litigation, solely for the purpose of embarking upon his *pro se* obstructionist and frivolous activities. He has done precisely that in the *Beatrice* and *American Brands* stock underpinning his two Proofs of Claims in the Drexel Chapter 11.

B. The Legal Precedents Fully Support The Second Circuit's Sanctions and Injunctive Relief

The Court of Appeals has a solid foundation in statutes 28 U.S.C. § 1912 and § 1927 and Rule 38, F.R.A.P. to impose sanctions, as in well as the inherent power of the Courts. *Clark v. C.I.R.*, 744 F.2d 1447 (10th Cir. 1984); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980).

Under Rule 38, F.R.A.P., the Court of Appeals may award just damages and single or double costs to the appellees if the Court determines that an appeal is frivolous. *Bartel Dental Books Co., Inc. v. Schultz*. 786 F.2d 486 (2d Cir. 1986) (per Rule 28, double

costs and damages, attorneys fees ". . . our patience with frivolous appeals is at an end") *In re Hartford Textile Corp*, 659 F.2d 299, 305 (2d Cir. 1981), *cert. denied*, 455 U.S. 1018 (1982) — "We refer him to our stern warning that the United States Courts are not powerless to protect the public, including litigants who appear before the Courts, from the depredations of those . . . who abuse the process of the Courts." *Chemiakin v. Yefimow*, 932 F.2d 124, 130 (2d Cir. 1991); *S.R. Mercantile Corporation v. Maloney*, 909 F.2d 79, 82 (2d Cir. 1990).

The Court of Appeals has invoked 28 U.S.C. § 1912 together with Rule 38 on appeals found to be without merit and frivolous and caused the prolongation of proceedings by the frivolous appeal, as here. *Teledyne Industries, Inc. v. Podell*, 546 F.2d 495 (2d Cir. 1976); *Kaynard v. MMIC, Inc.*, 734 F.2d 950, 954 (2d Cir. 1984), invoking both 28 U.S.C. § 1912 and § 1927. Leighton pressed forward with his frivolous appeal notwithstanding the decision of the Court of Appeals upholding the SLC Settlement Agreement, confirming the appropriateness of the Pool Recovery and Injunction, and taking judicial notice of the Global Settlement and the recovery there involved. Compounding this wilful delay and bad faith, he also knew that he had no standing to appeal. In fact his whole approach in *Drexel* was a mere duplication of his vexatious practices in the Delaware Courts. Leighton was clearly subject to sanctions under Rule 38, and 28 U.S.C. §§ 1912, 1927.

As a *pro se* litigant, Leighton was nevertheless subject to sanctions and injunction. Knibb, *Federal Court of Appeals Manual* (2d Ed.-West's Handbook Series), § 16.4, at 194:

> The sanctions against meritless appeals contained in F.R.A.P. Rule 38 have been imposed against pro se appellants. Those sanctions may include an award of attorneys fees in favor of a private party, or the

> government, when required to respond to a frivolous pro se appeal. A pro se party who engages in vexatious litigation may be enjoined from further appearances pro se.

In *Constant v. United States*, 929 F.2d 654, 659 (Fed. Cir. 1991), *cert. denied*, —U.S.—, 111 S. Ct. 2799, 115 L. Ed. 2d 973 (1991), the Court of Appeals not only imposed sanctions on plaintiff Constant *pro se* under F.R.A.P. Rule 38, but granted precisely the same type of injunctive relief as applied by the Second Circuit to Leighton holding that, "In light of Constant's continuous abuse of the appellate process, we cannot opine that papers he may hereafter file in this Court will be well-founded and presented in good faith. Accordingly, we direct the clerk of this court hereinforth to accept for filing no motion, petition, pleading or other fileable paper from James Constant without an order of the Court approving the filing." The Court in *Constant* dealt with key factors similar to Leighton. Constant's appeal was founded solely upon legal theories which were explicitly rejected by that Court in Constant's prior appeal in the same case. Here, the situation is more egregious, since Leighton was reiterating in seven Courts his same rejected legal theories, and his appeal to the Second Circuit in *Drexel* was knowingly attempting to raise issues most recently decided by that Court. Also, in the Court in *Constant* adverted to "his long history of litigation and relitigation of the same issues." A clear parallel with Leighton's conduct. Accord, *In re Martin-Trigona*, 737 F.2d 1254, 1261-1264 (1984).

III.

THIS COURT SHOULD ASSESS DAMAGES AGAINST PETITIONER.

Leighton's record is manifestly founded in bad faith. The arguments in his Petition are not only frivolous but patently distorted and calculatingly false. He should be assessed damages

and double costs under Rule 42.2 of this Court, it is respectfully urged, so that this Court and litigants can be spared further frivolous petitions from Leighton. His is acting in bad faith.

It should be brought to this Court's attention that Leighton failed to comply with this Court's Rules as to his petition. The Clerk's Office returned 39 copies for correction and retained one copy. Leighton then purportedly delayed from December 16, 1992 to January 21, 1993 filing forty corrected additional copies of his petition. He only delivered 20 copies. His appeal time expired on December 16, 1992. When the Clerk's Office finally docketed his appeal on January 21, 1993 upon receipt of the twenty additional corrected copies so that forty corrected copies were filed, Leighton did not notify Respondents' counsel of the docketing until his letter of January 28, 1993 was received on February 1, 1993 (RA-80-89). This is wilful misconduct on the part of a seasoned *pro se* litigant who has now filed eleven petitions for certiorari in this Court.

CONCLUSION

It is respectfully submitted that since the petition does not merit any of the Court's criteria for exercising its discretion to grant a writ of certiorari and the Court of Appeals correctly dismissed his appeal and granted sanctions and injunctive relief, the Court should decline to issue the writ. It is further respectfully requested that the Court award damages and double costs against Leighton for filing the frivolous petition and causing needless delay, waste of time and expenses.

February 22, 1993

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Case No. 92-5042

In re THE DREXEL BURNHAM LAMBERT GROUP, INC., et al.,

Appellees,

WILLIAM LEIGHTON,

Appellant

AFFIDAVIT IN SUPPORT OF MOTION OF SUBCLASS B REPRESENTATIVES, AND THE OTHER CLAIMANTS, APPELLEES, TO DISMISS APPEAL AND FOR SANCTIONS AND INJUNCTIVE RELIEF

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

STANLEY NEMSER, being duly sworn, deposes and says:

1. I am a member of Wolf Popper Ross Wolf & Jones ("Wolf Popper") and, together with David Berger of Berger & Montague, P.C. ("Berger & Montague"), Co-Counsel for the following Appellees ("Moving Appellees"): (i) Subclass B Representatives and Subclass B certified by the District Court pursuant to Securities Litigation Claims Settlement Agreement dated May 3, 1991 ("SLC Settlement Agreement") which settlement was approved by the District Court and the approval affirmed by this Court (960 F.2d 285-2nd Cir. 1992), *Drexel I*, and (ii) the Other Claimants under the Stipulation of Settlement dated as of March 9,

1992 ("Global Settlement") with Michael R. Milken and the other settling defendants (A50-92), which settlement was approved by the District Court (A40-46, A47, A95-107).

2. This affidavit is submitted in support of the Moving Appellees' motion (a) to dismiss Appellant William Leighton's ("Leighton") appeal for lack of standing, (b) for sanctions under Fed. R. App. P. 38 for filing a patently frivolous appeal, and (c) for an injunction permanently enjoining Leighton from making any further motions or applications or filing any further appeals in this Court or the District Court or any other Court in connection with the respective judicial approvals of the SLC Settlement Agreement, the Global Settlement, and the class settlement in *Presidential Life Insurance Company v. Michael R. Milken. et al.* ("*Presidential Life* class action"), 92 Civ. 1151 (MP), approved by the District Court (*Exhibit GG*), and the confirmation of the Plan of Reorganization.[1]

3. Leighton's instant appeal (A108-110) from the denial of his motion to intervene is but another example of his reckless disregard for the judicial process in making an array of motions, filing objections to settlements and taking appeals that are meritless and frivolous and vexatious and as to which he has been found to lack standing, reprimanded and assessed damages by many courts including this Court. *See* accompanying Memorandum of Law; the Affidavit of Stanley Nemser, sworn to August 6, 1991 (*Exh. F*; the Affidavit of Edward Labaton, sworn to July 5, 1990 (*Exh. BB*); and the profusion of his *pro se* motions,

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1 Annexed to this affidavit are exhibits preceded by the attached exhibit list, submitted in support of this motion. These exhibits are referred to in this affidavit and in the accompanying memorandum of law. References will be Exh. and, as appropriate, page references.

References to Appellant's Appendix will be (A--).

objections and appeals in the *Beatrice* litigation (*Exhs. J through S*), in the *American Brands* litigation (*Exhs. T through Y*), in the *Colonial Penn Group* litigation (*Exhs. Z and AA*), in the *Revlon* litigation (*Exhs. BB through EE*), and in *Conway v. Davis* (*Exh. FF*).

4. Underlying his motion to intervene filed on March 26, 1992 (A93) was his irresponsible attempt to use *Marino v. Qrtiz*, 484 U.S. 301 (1987) as the predicate for his sham intervention motion seeking thereunder to appeal from the judicial approvals of (a) the SLC Settlement Agreement approved by the District Court by Order of August 9, 1991 and its August 20, 1991 Decision, Findings of Fact and Conclusions of Law, as amended, and affirmed by this Court on March 27, 1992 (*Drexel I*,) and (b) the Global Settlement approved by the District Court Order on March 9, 1992, as amended March 23, 1992 and April 24, 1992 (A40-46, 47, 95-107).

LEIGHTON LACK OF STANDING

A. No Standing to Appeal from the Order of August 9, 1991 and August 20, 1991 Decision and Findings and Conclusion

5. Leighton filed two Proofs of Claim in the Drexel Chapter 11 proceedings: (1) Proof of Claim No. 6532 concerning the *Beatrice* litigation, and (2) Proof of Claim No. 6557 concerning the *American Brands* litigation (*Exhs. A and B*). His claims were classified as Subclass B Securities Litigation Claims, and thereby he was a Securities Litigation Claimant entitled to file objections as a class member. The *Marino* case is inapplicable. He did file objections to the SLC Settlement Agreement and appeared at the Settlement hearing (*Exhibit F, Exh.* G. pp 8-12). Leighton failed to appeal from the District Court's August 9, 1991 Order and its August 20, 1991 Decision, Findings and Conclusions. Other objectors who are Subclass B members did appeal, and the District

Court's approval of the SLC Settlement Agreement was affirmed (*Drexel I*). For Leighton to seek to argue objections to the SLC Settlement Agreement at this late stage and after this Court's affirmance is irresponsible. This Court in its decision *In re Drexel Burnham Lambert Group Inc.*, 960 F.2d at 289-290 (*Drexel I*), upheld the finality and appealability in bankruptcy cases of the District Court's August 9, 1991 Order. Consequently, Leighton has no standing to argue any aspects of his objections to the approval of the SLC Settlement Agreement.

6. In conjunction with the SLC Settlement Agreement, Section 12.2 and 12.3 of the Debtor's Second Amended and Restated Joint Plan of Reorganization ("Plan of Reorganization") provides for release *inter alia* of Identified Settling Parties and injunction against commencing or continuing any action or proceeding against any Identified Settling Party (except an action pending as of March 3, 1991 in which a Securities Litigation Claimant is a plaintiff and an Identified Settling Party is a defendant). Identified Settling Parties are defined in the Plan of Reorganization as any person who has made a settlement with the Pool Administrators after May 3, 1991, which the District Court on or prior to the Confirmation Date, on notice and opportunity to be heard, has found to provide a material benefit to the Debtors' estates and to consummation of the Plan. In addition, under the SLC Settlement Agreement the Subclass B claimants do not share in the Pool Recoveries. In its decision in *Drexel I*, this Court approved both the Release and Injunction and Pool Recovery provisions. 960 F.2d at 293, and took judicial notice of the District Court's approval on March 9, 1992 of the Global Settlement providing for a total recovery of $1.3 billion. 960 F.2d at 289, ftn. 2. *See also Exh. E* - R.J. Davis Affidavit in Opposition to Leighton's Motion to Intervene. Thus, Leighton has no standing to appeal to this Court in regard to the Release and Injunction and Pool Recovery provisions of the SLC Settlement Agreement and the Plan, or from any other provisions of the SLC Settlement Agreement.

B. No Standing to Appeal from the Order of the Bankruptcy Court and the District Court Confirming the Plan of Reorganization

7. Leighton raised his same type objections both in writing and in oral argument before the Bankruptcy Court at the confirmation hearing held on March 5, 1992. Bankruptcy Judge Conrad expressly overruled his objectives. Leighton did not appeal from the Confirmation Order of the Bankruptcy Court and the District Court, dated March 9, 1992. Here again, aside from the fact that this Court in *Drexel I* had affirmed approval of the Release and Injunction provisions, Leighton did not raise objection to the Release and Injunction provisions of the Plan at the confirmation hearing, and did not take an appeal from the Confirmation Order. (*Exh. G*, pp. 10-12).

C. No Standing to Appeal from the Order of March 9, 1992 Approving the Global Settlement and Designating Identified Settling Parties Pursuant to the Plan of Reorganization, and the Orders of March 23, 1992 and April 24, 1992 Revising the List of Identified Settling Parties

8. Pursuant to Notice of Hearing dated February 14, 1992 upon Joint Motion of the Debtors and the Pool Administrators to approve the Global Settlement as fair and reasonable pursuant to Bankruptcy Rule 9010 and to designate the Identified Settling Parties (A22-31), a Settlement Hearing was held on March 9, 1992 (*Exh. D* - Transcript) before Judge Pollack.

9. Leighton filed objections to the Global Settlement (A32-37), but did not argue orally before Judge Pollack (*Exh. D*).

10. Leighton had *no interest in the Global Settlement* for the following reasons:

(a) He did not have an underlying Drexel-related

litigation against Milken or any of the other Identified Settling Parties or against any of the Settling Defendants in the Global Settlement. In fact, he never asserted a claim against any of the Settling Defendants. Under the Global Settlement, any claimant who had brought litigation against any of the Settling Defendants involving Drexel-related claims prior to February 4, 1992 were entitled to share in that portion of the settlement fund equalling $250 million. This includes all cases listed on Schedule 8 attached to the Global Settlement ("Other Claimants"). (A68-69) This distribution of $250 million from the Settlement Fund and the SEC Civil Disgorgement Fund was intensively negotiated by Co-Counsel for Subclass B and for the Other Claimants many of whom are also Subclass B claimants who had instituted such underlying lawsuits against one of more of the Settling Defendants. But Leighton did not institute any such underlying lawsuit against Milken or any of the other Settling Defendants prior to February 4, 1992 or at any time. Moreover, as a Securities Litigation Claimant in Subclass B who did not have such an underlying lawsuit pending as of May 3, 1991, Leighton was thereby enjoined from asserting any Drexel-related claim against any of the Identified Settling Parties and is deemed to have released them from all Drexel-related claims. His only other possible avenue for participation or having any interest in the Global Settlement whatsoever was the *Presidential Life* class action.

(b) The *Presidential Life* action was commenced on February 18, 1992, as a class suit on behalf of all persons or entities acting in their own capacity, derivatively or in a representative capacity, directly or indirectly, having Drexel related claims against any of the defendants arising out of activities from January 1, 1978 through December 31, 1991, but which were not asserted in lawsuits prior to February 4, 1992. Excluded from the class are the Other Claimants and certain other exceptions. As part of the Global Settlement, subject to approval of the contemporaneous settlement entered into in the *Presidential Life*

class action, the sum of up to $50 million has been negotiated for distribution to members of the *Presidential Life* class who file valid Proofs of Claims and have not excluded themselves from the class (A68-69; *Exh. GG* - Order and Final Judgment dated July 17, 1992). World-wide notice both individual and publication was given to these putative class members of the Stipulation of Compromise and Settlement dated March 11, 1992 ("*Presidential Life* Settlement"), pursuant to the District Court's Preliminary Approval Order dated March 11, 1992, scheduling the Settlement Hearing for July 14, 1992. After the full-scale hearing on July 14, 1992 and the Court's issuance on July 17, 1992 of its Findings of Fact and Conclusions of Law, the Court entered its Order and Final Judgment approving the *Presidential Life* Settlement. (*Exh. GG*, pp. 1-2). If Leighton considered that he had any existing but unasserted claim against Milken or any of the other Settling Defendants, he could have filed a Proof of Claim in the *Presidential Life* Settlement. But he did not. *Instead he filed a Request for Exclusion from the Presidential Life class (Exh. H), which was granted and recognized as an opt-out by the Court at the hearing held on July 14. 1992* (*Exh. I*). Consequently, Leighton has no interest in any part of the Global Settlement and therefore has no standing to appeal from any aspect of the Global Settlement.

D. No Standing to File Any Appeal to this Court for Failure To Pay the Sanction Damages Assessed by this Court in Shenkman v. Revlon

11. This Court by Order dated January 17, 1992, dismissed on motion, Leighton's appeal in the *Revlon* litigation under Docket No. 91-7911, for lack of standing and granted appellees' request for sanctions and ordered payment of damages of $2,500. I have been advised by counsel for the plaintiffs' appellees in *Revlon* that this order has not been complied with by either Leighton or his wife Yvette M.G. Leighton the nominal *pro se* objector in that litigation represented by Leighton *pro se*. This Court in that Order directed

"that the Clerk's Office is instructed not to file any further papers from appellant in this Court until the sanctions have been paid." (*Exh. EE*).

12. Leighton has known that the only basis that the District Court would permit him as a non-member of the Bar to represent another person *pro se* was its decision to treat Leighton and his wife as a *"marital unit"*. As Judge Sand stated at the first *Revlon* settlement hearing on August 2, 1989, when Leighton rose to object, "There is a problem with respect to someone who is not a member of bar appearing on behalf of another. We will, for these purposes, assume the marital unit and give you leave to proceed *pro se*." (*Exh. CC*).

13. At the second *Revlon* settlement hearing on August 20, 1991, Leighton once again rose to object although he had his wife opt out. He stated: "My position is . . . and I'm her husband. I'm appearing with the court's permission on the basis of the marital union . . ." (*Exh. DD*).

14. As indicated in the affidavit of Edward Labaton, sworn to July 5, 1990, Leighton actually was the active participant in the *Revlon* litigation and not his wife. (*Exh. BB*, pp. 1-2). In opposing that Leighton's motion in *Revlon* to intervene, counsel for plaintiff stated in his affidavit (*id.*, pp. 1-2) that Mrs. Leighton conceded that Leighton assisted her in the preparation and submission of the motion, that on the most perfunctory matters when contacted on the telephone by plaintiffs' counsel, she immediately put her husband on the telephone. Leighton appeared before Judge Sand alone at the August 2, 1989 settlement hearing (*Exh. BB*, pp. 1-2).

15. Leighton has a checkered history when it came to paying the assessments imposed as sanctions, and by flaunting orders of this Court imposing sanctions. *See Colonial Penn Group* litigation and this Court's Order of January 4, 1984, followed by District

Court's Order of August 22, 1984, requiring entry of judgment for execution levy and subpoenas (*Exhs. Z and AA*). *See* also, the vexatious and harassing conduct of Leighton in connection with the Delaware Supreme Court's Order (*Exh. R*) assessing sanctions against him on October 16, 1987 in the *Beatrice* litigation (the very same litigation that he has wrongfully inserted, in disregard of Delaware Court injunction orders, in his Proof of Claim No. 6532 filed in the Drexel Chapter 11 proceeding). It was not until September 7, 1990, almost three years later and after *four* additional orders of the Delaware Supreme Court, that the actual assessed amounts were decided by that Court. (*Exh. S*).

16. When Judge Pollack began questioning Leighton about the unpaid assessment in *Revlon*, at the *Presidential Life* settlement hearing on July 14, 1992, Leighton attempted to distance himself from his wife and failed to advise the Court that it was on the basis of the marital unit that he was entitled to and did actively participate and represent his wife. (*Exh. I*)

17. By totally disregarding this Court's assessment order of January 17, 1992 not to file any further papers in this Court until the sanctions have been paid, he in effect has filed his papers on the instant appeal in contempt of this Court or at the least without any right or standing to do so under these circumstances.

E. No Standing by Reason of Contempt of Delaware Chancery Court, Res Judicata and Collateral Estoppel

18. Leighton filed Proof of Claim 6532, on behalf of himself as a former Beatrice shareholder, "and on behalf of all persons who had bought their shares of the common stock of [Beatrice] before April 17, 1986, the Effective Time of the merger of Beatrice into BCI Holdings Corporation . . ." (*Exh. A*, p. 1)

19. Leighton's claim under the Proof of Claim arises out of

the takeover merger of Beatrice Companies Inc. ("Beatricen). As is his usual tactic, he purchased his 10 shares of Beatrice after the time of the Beatrice's alleged breach of duty, after the February 20, 1986 record date for the Beatrice shareholder vote on the proposed merger, and after he knew and reviewed the March 11, 1986 proxy statement and the terms of the proposed settlement of the pending class and derivative actions involving Beatrice and its shareholders (*Exh. O* - Decision and Order of Supreme Court of Delaware).

20. As shown in the *Exhibits J thru S*, Leighton aggressively participated in all phases of the judicial proceedings in the Delaware courts concerning the proposed settlement of the shareholder litigation regarding the proposed takeover merger and related transactions. He was found to lack standing. But he took the fruits of the substantial settlement benefits, as a *Beatrice* shareholder until the merger consummation.

21. By Order dated March 11, 1986, the Delaware Chancery Court certified the class in the *Beatrice* litigation defined, as follows: " . . . consisting of all holders (other than defendants) of Beatrice Common Stock, Beatrice Preference Stock and all holders (other than defendants) of any security convertible into or exercisable for Beatrice Common Stock (including Warrants and Convertible Debentures) at the close of business on February 20, 1986 *and their successors in interest or transferees. immediate and remote.*" (Emphasis supplied.) (*Exh. K*, pp. 1-2).

22. By Order and Final Judgment, dated April 16, 1986, approving the settlement in *Beatrice*, the Delaware Chancery Court directed, *inter alia*, as follows:

> "The Action is hereby dismissed on the merits as to all defendants and with prejudice against plaintiffs and all members of the certified class
>
> . . .

> "Plaintiffs and all members of the certified class are hereby permanently barred and enjoined from instituting or prosecuting, either directly, representatively, derivatively or in any other capacity; any other action against *anyone* asserting claims which are Settled Claims as defined in the Stipulation." (Emphasis supplied.) (*Exh. M*, p. 3)

23. The broad scope of the definition Settled Claims is set forth at pages 24-25 of the Stipulation and Agreement of Compromise and Settlement (*Exh. J*, pp. 24-25), and covers all phases of the transactions asserted against any of the defendants or, *inter alia*, any of their agents, advisers or representatives (which would include Drexel).

24. Not only is Leighton barred by the dismissal with prejudice and the injunction, but 90 would all members of the class he would purport to represent under his Proof of Claim in Drexel. He is clearly in contempt of the Delaware Chancery Court Order and Final Judgment by filing the Proof of Claim in Drexel.

25. The same situation holds true with respect to Leighton's Proof of Claim No. 6557 concerning American Brands (*Exh. Z*). He purports to file the Proof of Claim "on behalf of himself as a shareholder of record of American Brands, Inc., a Delaware corporation and on behalf of all persons similarly situated."

26. Leighton's claim arises out of the takeover contest between American Brands and E-II Holdings, Inc. ("E-II Holdings"), and particularly American Brands announced tender offer and ultimate purchase of E-II Holdings at a higher price than the initial counter-tender offer price. Here again he purchased 10 shares of American Brands after the American Brands announcement of its tender offer on January 21, 1988 and the

commencement of class suits on January 25, 1988. He purchased his 10 shares on January 26, 1988. Here again, he was found to lack standing.

27. In similar fashion to his other improper intrusions in litigation and settlements, Leighton aggressively sought to participate and oppose the settlement. As a shareholder of American Brands he reaped the substantial benefits of the settlement. *See Exhs. T thru Y.*

28. The Final Order and Judgment, dated October 28, 1988, of the Delaware Chancery Court, approving the settlement, dismissed the Action as to all defendants with prejudice as against the plaintiff and all members of the class, and issued the following injunction (*Exh. X*, pp. 3-4):

> Plaintiffs in the Actions, all past and present stockholders of American Brands, all other members of the Class, and American Brands and all members suing on behalf of or as a successor in interest to American Brands or its stockholders, are hereby permanently barred and enjoined from instituting or prosecuting any action, either directly,representatively, or in any other capacity, asserting claims against any defendants, or against any past or present officer, director, employee, agent, attorney, investment banker, commercial banker, financial advisor, representative, affiliate or subsidiary of any defendant, or any heir, successor or assign of any of them, or against anyone else, in connection with, or that arise now or hereafter out of or relate to any matter, transaction or occurrence referred to in any of the complaints or the Stipulation (except for compliance with the Settlement).

This injunction effectively bars Leighton on behalf of himself and other American Brands past and present shareholders and all members of the Class, and successors in interest from filing any Proof of Claim in Drexel arising out of the Settled Claims (*Exh.* T, pp. 9-10). This injunction specifically covers any action against, *inter alia*, investment banker, commercial banker, and financial advisor. He is in contempt of the Delaware Chancery Court Final Order and Judgment by filing the Proof of Claim in Drexel.

F. The Claims Asserted by Leighton In His Proofs of Claim in Drexel are Meritless and Frivolous

29. In each of his Proofs of Claim, Leighton claims violations of Regulations G and U under Section 7 of the Securities Exchange Act of 1934, and failure to register as an investment company pursuant to Section 8 of the Investment Company Act so that securities transactions were prohibited by Section 7(a)(1) of the Investment Company Act. These purported claims are meritless. Firstly, in the *Beatrice* litigation, the SEC disagreed with Leighton and found no violations of the Investment Company Act (*Exh. HH*). Secondly, Leighton raised these claims before the Chancellor in Delaware who found them unpersuasive to delay the settlement (*Exh. L*, p. 15) and sought to raise them before the Delaware Supreme Court. Thirdly, Leighton raised these baseless contentions before the District Court in connection with the hearing regarding the SLC Settlement Agreement, the Global Settlement, the Plan of Reorganization confirmation, and his motion to intervene before the District Court. The District Court rejected all of these purported claims. Fourthly, this Court as well as all the other Circuit Courts which have dealt with the margin requirement regulations under Regulations of the Federal Reserve Board have ruled that there is no private right of action (see accompanying Memorandum of Law). Moreover, the regulatory agency has not raised any violation of the transactions involved in the *Beatrice* and *American Brands* litigation.

SANCTIONS SHOULD BE IMPOSED

30. The frivolous, meritless and vexatious appeal from denial of his motion to intervene is but another abuse of the judicial process by Leighton. Not only has he no basis or standing for the appeal, but he also sought a remand to the District Court which on transfer to the appeal panel for ruling this panel has been called upon to deal with that motion. Leighton must be stopped or he will continue to harass the courts in connection with proceedings to follow under the SLC Settlement Agreement, the Global Settlement, the Plan of Reorganization, and perhaps even the *Presidential Life* class action. Sanctions are in order here, the damage payments to be added to the Settlement Fund in the Global Settlement.

INJUNCTION SHOULD BE GRANTED

31. Based upon the pattern clearly unfolding in the Drexel Chapter 11 proceedings including the SLC Settlement Agreement, the Plan of Reorganization, the Global Settlement, and the *Presidential Life* Settlement, this Court should permanently enjoin Leighton from making any further motions or applications or filing any further appeals in this Court or the District Court or any other court in connection with the respective judicial approvals of the SLC Settlement Agreement, the Global Settlement, the *Presidential Life* Settlement, or the confirmation of the Plan of Reorganization, including the Release and Injunction provisions and the Pool Recovery provisions. This limited injunction does not bar him from any proper participation in proceedings in furtherance of consummation of these settlements and the Plan of Reorganization. Moreover, no further motions or applications or filings should be permitted until he has paid the monetary sanctions imposed here and also in the *Revlon* litigation.

s/ Stanley Nemser
STANLEY NEMSER

Sworn to before me this
12th day of August, 1992

s/ Robert J. Berg
Notary Public

Exhibits Attached to Affidavit Of Stanley Nemser On Motion to Dismiss Leighton's Appeal and For Sanctions and Inlunctive Relief

Exhibit A	Leighton's Proof of Claim No. 6532 concerning Beatrice Companies, Inc., Filed in Drexel Chapter
Exhibit B	Leighton's Proof of Claim No. 6557 concerning American Brands, Inc., filed in Drexel Chapter 11 proceedings.
Exhibit C	Affidavit of Richard J. Davis, sworn to March 5, 1992, in support of the $1.3 billion Global Settlement.
Exhibit D	Transcript of the Settlement Hearing held on March 9, 1992 before Hon. Milton Pollack, in connection with the Global Settlement.
Exhibit E	Affidavit of Richard J. Davis, sworn to April 7, 1992, in opposition to Leighton's motion to intervene (without Exhibits), in connection with the Global Settlement.
Exhibit F	Extract from Affidavit of Stanley Nemser, sworn to August 6, 1991, in support of the Securities Litigation Claims Settlement Agreement dated May 3, 1991, and in response to Objections (Leighton, et al.) (without exhibits), and filed as an exhibit in opposition to Leighton's motion to intervene.
Exhibit G	Transcript of the Hearing held on April 10, 1992 before Hon. Milton Pollack, in connection with Leighton's motion to intervene.

Exhibit H	Leighton Request for Exclusion from Global Class Action, dated May 8, 1992, in *Presidential Life Insurance Company v. Michael R. Mieken. et al.*, 92 Civ. 1151 (MP).
Exhibit I	Extract from Transcript of Settlement Hearing held on July 14, 1992 before Hon. Milton Pollack, in connection with *Presidential Life* class settlement.
Exhibit J	Stipulation and Agreement of Compromise and Settlement, dated March 11, 1986, in Beatrice Companies, Inc. class and derivative litigation ("Beatrice litigation"), Delaware Chancery Court.
Exhibit K	Order of Delaware Chancery Court, dated March 11, 1986, certifying class and scheduling hearing on proposed settlement for April 14, 1986, in Beatrice litigation.
Exhibit L	Memorandum Opinion of Delaware Chancery Court, dated April 16, 1986, approving settlement in Beatrice litigation.
Exhibit M	Order and Final Judgment, dated April 16, 1986, of Delaware Chancery Court approving settlement in Beatrice litigation.
Exhibit N	Decision and Order of Delaware Supreme Court, dated June 11, 1986, denying Leighton's motion to vacate the April 16, 1986 Order and Final Judgment and to remand the matter to trial court for entry of a new order or, alternatively, to stay the Order and Final Judgment, in Beatrice Litigation.

Exhibit O — Decision and Order of Supreme Court of Delaware, dated February 20, 1987, affirming April 16, 1986 Order and Final Judgment, in Beatrice litigation.

Exhibit P — Decision and Order of Delaware Chancery Court, dated June 23, 1987, denying Leighton's motion to vacate the April 16, 1986 Order and Final Judgment, in Beatrice litigation.

Exhibit Q — Decision and Order of Delaware Chancery Court, dated July 6, 1987, denying Leighton's motion for reargument of Court's June 23, 1987 decision, in Beatrice litigation.

Exhibit R — Decision and Order of Delaware Supreme Court, dated October 16, 1987, (i) dismissing Leighton's appeal from Chancery Court Order, dated June 23, 1987, declining to vacate Order and Final Judgment entered April 16, 1986, and (ii) special order assessing costs and expenses (sanctions) against Leighton, in Beatrice Litigation.

Exhibit S — Decision and Order of Delaware Supreme Court, dated September 7, 1990, assessing costs against Leighton, and referring to three additional orders in the interim of the Delaware Supreme Court dated November 27, 1987 and March 30, 1988 (two Orders) reassessment of costs and expenses, in Beatrice Litigation.

Exhibit T — Stipulation and Agreement of Compromise and Settlement, dated August 4, 1988, in American Brands, Inc. class and derivative litigation ("American Brands litigation"), Delaware Chancery Court.

Exhibit U	Decision and Order of Delaware Chancery Court, dated September 2, 1988, denying Leighton's motion to intervene in American Brands litigation.
Exhibit V	Order of Delaware Chancery Court, dated September 9, 1988, certifying class and scheduling hearing on proposed settlement for October 28, 1988, in American Brands litigation.
Exhibit W	Decision and Order of Delaware Chancery Court, dated September 13, 1988, denying as premature plaintiffs' motion to enjoin Leighton from filing any further actions, petitions, objections or other papers in the American Brands litigation or in any other action in Delaware courts.
Exhibit X	Final Order and Judgment, dated October 28, 1988, of Delaware Chancery Court, approving settlement, in American Brands litigation.
Exhibit Y	Decision and Order of Supreme Court of Delaware, dismissing Leighton's appeal from the October 28, 1988 Final Order and Judgment, in American Brands litigation.
Exhibit Z	Order, dated January 4, 1984, of United States Court of Appeals, Second Circuit, (a) granting motion to dismiss Leighton's appeal (i) from the October 20, 1983 judgement of the District Court, Eastern District of New York approving settlement and denying Leighton's application to intervene in the Colonial Penn Group, Inc. class litigation ("Colonial Penn litigation') and his attempt to object to the settlement of that action, and (ii) from the November 15, 1983 order of the District Court

denying h is motion to amend the October 20, 1983 judgment, and (iii) assessing $1,500 damages against Leighton for vexatious litigation, and (b) awarding double costs and damages in the amount of #3,000, in addition to the District Court's assessed damages of $1,500.

Exhibit AA — Order and Judgment August 22, 1984, of the United States District Court, Southern District of New York denying Leighton's application for an order quashing subpoena issued by class plaintiffs to Citibank, and assessing damages of $750 assessment then remaining unpaid, in Colonial Penn litigation.

Exhibit BB — Affidavit of Edward Labaton, sworn to July 5, 1990, in Revlon, Inc. class litigation ("Revlon litigation"), in opposition to Leighton motion to intervene.

Exhibit CC — Extract from transcript of Settlement Hearing held August 2, 1989, before Hon. Leonard B. Sand, in connection with settlement in Revlon litigation.

Exhibit DD — Extract from Transcript of Settlement Hearing held August 20, 1991, before Hon. Thomas B. Griesa, in connection with settlement in Revlon litigation.

Exhibit EE — Order of United States Court of Appeals, Second Circuit, dated January 17, 1992, dismissing Leighton appeal and assessing damages of $2,500, in Revlon litigation.

Exhibit FF — Order dated May 2, 1988, of New York Supreme Court in *Conway v. Davis*, denying Leighton

motion to intervene and to vacate final judgment, and permanently enjoining Leighton from making any further motions or applications in the action.

Exhibit GG — Order and Final Judgment of Dismissal of Global Class Action, Including Permanent Injunctions, dated July 17, 1992, in *Presidential Life Insurance Company v. Michael R. Milken. et al.*, 92 Civ. 1151 (MP).

Exhibit HH — Correspondence between Leighton and Securities and Exchange Commission: Letter dated May 23, 1986 Leighton to SEC; Letter dated May 27, 1986 Leighton to SEC; Letter dated January 21, 1987 SEC to Leighton re Investment Company Act and BCI Holdings Corporation.

Exhibit II — Unified Consolidated and Amended Complaint, in *In re Beatrice Companies. Inc. Litigation*, filed March 6, 1986.

Exhibit JJ — Amended Complaint, *In re American Brands, Inc. Shareholders Litigation*, filed February 2, 1988.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 92-5042

In re

THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Debtors-Appellees.

WILLIAM LEIGHTON,

Appellant,

AFFIRMATION IN OPPOSITION TO SUBCLASS B REPRESENTATIVES' MOTION TO DISMISS

William Leighton affirms under penalty of perjury:

1. I am the appellant in this appeal and I am respectfully submitting this affirmation in opposition to the motion to dismiss filed by the Subclass B representatives. The motion was served on me at about 6:50 P.M. on August 13, 1992.

2. This appeal was docketed on April 30, 1992. On May 18, 1992, Scheduling Order No. 1 was issued, Exhibit 'A' and on June 23, 1992 a panel of this Court referred my motion to remand to the panel that is scheduled to hear oral argument on the merits. Thus, a substantive motion had been made and disposed of by this Court almost two months ago. If the Subclass B Representatives had any ground for making a substantive motion, they should have made it returnable on June 23, 1992.

3. The Subclass B Representatives now seek the dismissal of

this appeal which has been briefed by both sides and which is awaiting oral argument in accordance with the Order of this Court dated June 12, 1992, Exhibit 'B'. The Subclass B Representatives have not filed a brief or a memorandum within the time prescribed by the Order of June 12, 1992. Therefore, as a minimum, sanctions should be imposed on them and their motion should be denied because it disrupts the orderly appellate process.

4. As it appears from the Drexel appellee's brief, the Subclass B Representatives have made available to the attorneys for the Drexel appellees the contents of the affidavit of Stanley Nemser *three* days before that document was created. The Drexel appellees and the Subclass B Representatives now seek to have this Court try the issues of fact raised by that affidavit. I am unwilling to respond to those allegations because this Court is not a trial court and does not decide issues of fact.

5. My proofs of claim, Nos. 6557 and 6532, were filed almost two years ago and are Exhibits 'A' and 'B' to the Nemser affidavit. Since that time, the Debtors and the Subclass B Representatives have had sufficient time to dispute those claims and to bring the matter on for resolution before the appropriate trial court. Having failed to do so, they are now attempting to have this Court "try", belatedly, the issues raised by their motion.

I am one of the three persons who were found by the district court's 33-page decision of August 20, 1991, (which is in the record, document No. 106), over Subclass B Representatives' objections, to have standing to object to the settlement *per se*, see Finding No. 50 which reads in full :

> 50. The proponents of the Settlement and the SEC Disgorgement Distribution Plan at the (August 9, 1991) hearing consisted of : (i) the Debtors, (ii) the four Official committees

appointed in these chapter 11 cases, (iii) the four representatives of the Class, and (iv) The Securities and Exchange Commission (the "SEC"). Also appearing were 17 other persons and entities, including four who did not object, six who lacked standing to object as not being members of the Class, five class members who did not object to the Settlement, *per se*, but to their relative status within the settlement Class, and three Class members who objected to the Settlement *per se*. These latter objectors were (a) joint objectors the Liggett Group and Liquid Green; (b) joint objector, Hart Holding Company and Reeves Industry, Inc. and (c) *William Leighton*.

Objectors to their relative status within the Settlement Class included: (a) Hong Kong Bank of London Ltd.; (b) Citibank, Den Danske and Lloyd's Bank, Plc and Canadian Imperial Bank of Commerce who filed a joint objection; (c) PALCO; (d) Society Bank; and (e) certain plaintiffs in MDL 732 who sought inclusion of future judgment reduction and set-off features in the Settlement.

This Finding controls all proceedings after August 20, 1991. It was not appealed by the Subclass B Representatives. Their attempt to litigate before this Court Finding No. 50 by way of a substantive motion on this appeal is utterly frivolous and should be dealt with accordingly, i.e. by the imposition of substantial costs.

6. The Subclass B Representatives do not have standing to bo heard on this appeal bocause they have failed to file a brief or a memorandum in accordance with the Scheduling Order of May 18,

1992 as amended by the Order of this Court of June 12, 1932.

Their motion is entirely frivolous because whereas the Debtors seek *affirmance* of the final decision appealed from, the Subclass B Representatives seek *dismissal* of the appeal despite the district court's Finding No. 50.

s/ William Leighton
William Leighton

Affirmed this 14th day of August, 1992.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Case No. 92-5042

In re THE DREXEL BURNHAM LAMBERT GROUP, INC., et al.,

WILLIAM LEIGHTON,

Appellees,

Appellant

STATE OF NEW YORK)

COUNTY OF NEW YORK)

STANLEY NEMSER, being duly sworn, deposes and says:

1. This affidavit is submitted in response to William Leighton's ("Leighton") Affirmation In Opposition to Subclass B Representatives' Motion to Dismiss .

2. In his Affirmation, Leighton does not dispute that he failed to appeal from the August 9, 1991 Order approving the SLC Settlement Agreement which approval was affirmed by this Court (*Drexel I*); that he failed to appeal from the Confirmation Order of March 9, 1992 confirming the Drexel Plan of Reorganization; that he had no interest in the Global Settlement approved by the District Court Order of March 9, 1992; and that he opted out of the *Presidential Life* class action. He has no standing to take his instant appeal, as fully documented in the instant motion, and his appeal should be summarily dismissed as urged in the instant motion.

3. The record developed in the moving papers on this motion to dismiss is designed to show this Court that steps must be taken to curtail Leighton's frivolous, meritless and obstructionist conduct in relation to the Drexel reorganization and the Global Settlement with Milken and other Settling Defendants. For this purpose, imposition of sanctions and limited injunction relief sought should serve to terminate his improper conduct and yet not block him from any positive proper steps.

4. Turning to his Affirmation, his statement that the Subclass B Representatives have not filed a brief or memorandum on his appeal pursuant to the rescheduling June 12, 1992 Order of this Court is not true. We are among the attorneys for Appellees who filed the joint Brief of Appellees. The Appellees on the Joint Brief are the Debtor-Appellees (by Weil, Gotschal & Manges), the Subclass B Representatives - Appellees (by the Wolf Popper firm and Berger & Montague, P.C.), and the Pool Administrators - Appellees (by Cravath, Swaine & Moore, and the Milberg Weiss firm).

5. We have requested that the motion to dismiss the appeal be heard by the appeals panel. In this respect, the Moving Appellees contend that the Leighton appeal is clearly dismissable on the grounds raised on the motion, but they are also covering the appeal by participating in the joint Brief in the event that the appeals panel should decide to rule on his appeal itself. In all events sanctions and limited injunctive relief should be imposed.

6. In referring to the August 20, 1991 Decision and Findings of Fact and Conclusions of Law on the SLC Settlement Agreement, Leighton's objection was overruled. Whatever may have been his standing before the District Court and Bankruptcy Court on that purported objection, the plain fact is that Leighton did not appeal from the Order and Decision approving the SLC Settlement Agreement, and which approval has been affirmed by this Court.

Moreover, Leighton's argument before the District Court and the Bankruptcy Court at the August 9, 1991 hearing was totally frivolous. (See *Exh. KK* annexed hereto - Extract from August 9, 1991 Transcript - portion re Leighton.)

We respectfully submit that the motion to dismiss and to impose sanctions and injunctive relief should be granted.

s/ Stanley Nemser
STANLEY NEMSER

Sworn to before me this
25th day of August, 1992

s/ Robert C. Finkel
Notary Public

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11 Case No.
90 B 10421 (FGC)

90 CIV. 6954 (MP)

In Re

THE DREXEL BURNHAM LAMBERT GROUP, INC., et al.,

Debtors.

August 9, 1991
10:00 a.m.

Before:

HON. MILTON POLLACK,
District Judge

HON. FRANCIS G. CONRAD,
Bankruptcy Judge

SPEAKERS:

WEIL GOTSHAL & MANGES
Attorneys for Drexel
BY: PETER R. GRUENBERGER
MILBERG WEISS BERSHAD SPECTHRIE & LERACH
Attorneys for Securities Litigation Claimants Group
BY: MELVYN WEISS

BERGER & MONTAGUE
Attorneys for Plaintiffs, Co-Lead/Liaison Counsel
BY: DAVID BERGER

WOLF POPPER ROSS WOLF & JONES
Attorneys for Plaintiffs, Co-Lead/Liaison Counsel
BY: STANLEY NEMSER

* * *

[46] MR. LAYTON: Good morning, your Honor. William Layton, 249 West 11th, New York, New York 10014.

Your Honors, my first point is jurisdictional. Is this a bankruptcy case? About nine months before the group declared bankruptcy, Drexel underwrote five and a half or more billion dollars in junk bonds. I have with me prospectuses with respect to that transaction. The prospectus says Drexel bought and RJR Nabisco sold $5-1/2 billion.

In order to handle $5-1/2 billion worth of securities, you must have adequate capital. Where did the money come from? The prospectus doesn't tell us where from. Apparently, we are led to believe, from the prospectus, that Drexel owned or had control over the $5-1/2 billion.

How can one dissipate $5-1/2 billion in the course of nine months and then come into bankruptcy court [47] and say we are bankrupt? That is not answered by the bankruptcy finding. If Drexel is not a bankrupt, this court. has no bankruptcy jurisdiction.

JUDGE POLLACK: Is it your submission that Drexel is not bankrupt?

MR. LAYTON: Yes, your Honor.

JUDGE POLLACK: Have you got anything at all seemingly on this earth that could establish that Drexel has more assets than its liabilities?

MR. LAYTON: Yes, I do.

JUDGE POLLACK: All right.

MR. LAYTON: I do. For example, on December 5, 1988, an article appeared in Barron's, written by one of the distinguished members of the accountants' bar, who estimated that Drexel then had $850 million profit in the BCI Beatrice warrants. I called this gentleman. He assured me that everything he has written was true and he is willing to testify to that effect. That item is not listed —

JUDGE POLLACK: Mr. Layton, I think your remarks are very, very interesting. I think that the facts and the figures really don't support what you have to say. Perhaps Judge Conrad would be willing to address you on that subject briefly.

JUDGE CONRAD: Mr. Layton, I have had an opportunity to read your objection which was filed with the district court. Unfortunately, it wasn't filed with the [48] bankruptcy court, which would be also required. However, Judge Pollack gave me the courtesy of sending over your appearance.

Your objections, as I read them, do not go to an objection to the settlement but are arguing an objection to the jurisdiction of either the bankruptcy court or the district court, as we are both hearing this matter.

If you wish to file an objection to jurisdiction, then I request that you file such objection to the bankruptcy court in the first place and make that an appropriate objection. You are not objecting to the settlement in this case. You are objecting to the jurisdiction of this court. It would be my ruling that your statement today is just inappropriate.

MR. LAYTON: Your Honor, there was no provision in the notice that objections should also be filed with the bankruptcy court.

JUDGE POLLACK: Mr. Layton, I think you have been guided by a very expert opinion as to what you should do. Perhaps you should take that into account, think it over, and act accordingly.

Is there any other objection to be heard?

MR. O'BRIEN: Yes, your Honor.

JUDGE POLLACK: All right.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

43660

Docket No.
92-5042

In re

THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Debtors-Appellees.

WILLIAM LEIGHTON,

Appellant,

SUPPLEMENTAL AFFIRMATION IN OPPOSITION
TO SUBCLASS B REPRESENTATIVES'
MOTION TO DISMISS

William Leighton affirms under penalty of perjury :

1. I am the appellant in this appeal and I am respectfully submitting this supplemental affirmation in opposition to the motion to dismiss filed by the Subclass B representatives, appellees, on August 13, 1992. The subject matter of this Supplemental Affirmation was not dealt with in my Affirmation of August 14, 1992.

2. According to the Certificate of Service filed by the Subclass B Representatives, appellees, their motion to dismiss was served also on the certain attorneys whose interest in this appeal does not appear whether from the appellees' brief filed herein on August 10, 1992 or from the motion to dismiss. These attorneys are: Daniel R. Murdock, Esq., Mark A. Belnick, Esq.[1], Theodore N. Miller, Esq. and Richard V. Sandler, Esq. None have participated in the

proceedings below for which reason none have been named in the amended notice of appeal, see R. 22-24 and 109-110 in the appendix.

A copy of that Certificate of Service is attached hereto as Exhibit 'A'. Since I have not been served with copies of these attorneys' notices of appearance (if any were filed by them), I do not know what their interest consists of.

3. I am aware that Daniel R. Murdock, Esq., Theodore N. Miller, Esq. and Arthur I. Liman, Esq.[1] are attorneys of record for certain parties in the related action known as *Presidential Life Insurance Company v. Michael R. Millken, et al.*, 92 Civ. 1151 (MP), S.D.N.Y. *Presidential* has not been consolidated below with this action, as it should have been.

In the *Presidential* case, a broad injunction was decreed by the district court running as to all members of the Global Class (*including, without limitation, those requesting exclusion therefrom*). The said attorneys have *not* served the injunction upon those enjoined. Thus, the district court does not have personal jurisdiction over those who have excluded themselves from the *Presidential* class. The injunction purports to

> permanently enjoin (the commencing or prosecution) in any court (federal or state) or any other forum other than (the district court), any claim, action or *proceeding* that challenges or *seeks review* of or relief from any act, decision order, judgment or any other ruling of the (district court) in connection with the Global Class Action.

The injunction purports to limit the scope of this Court's powers under 28 U.S.C. Sec. 2106.

4. The motion to dismiss has *not* been signed by Messrs. Murdock, Miller, Belnick and Sandler, thus it is not apparent from the face of the motion that it has been instigated by them in the interest of their clients.

For this reason, the motion should be stricken and a substantial fine should be imposed upon the attorneys for the Subclass B Representatives, appellees, who have filed the motion as surrogates for the clients of Messrs Murdock, Miller, Belnick and Sandler.

5. On August 31, 1992, I have received a letter from the Subclass B Executive Committee, Exhibit 'B'. Thus, whereas the motion to dismiss seeks an order from this Court to bar my claims, the Committee is setting up procedures for the hearing of those claims on the merits.

This further demonstrates the utter frivolousness of the motion to dismiss and the irresponsible manner in which it was brought on.

6. I have mailed copies of this Supplemental Affirmation to the attorneys named in the amended notice of appeal and to Messrs Murdock, Belnick, Miller and Sandler at their addresses stated in the attached Certificate of Service with respect to the motion to dismiss.

s/ William Leighton
William Leighton

Affirmed this 1st day of September, 1992.

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1. Mr. Belnick is Mr. Liman's law partner in the law firm of Paul Weiss Rifkind Wharton and Garrison. In August, 1991, that firm was counsel to Michael Milken in the court below.

EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Case No. 92-5042

IN RE DREXEL BURNHAM LAMBERT, INC.,

Appellees,

William Leighton,

Appellant.

CERTIFICATE OF SERVICE

KATHLEEN FELTON, being duly sworn, deposes and says that she is employed by Wolf Popper Ross Wolf & Jones and that on Thursday, the 13th day of August, 1992, she caused a copy of (i) AFFIDAVIT IN SUPPORT OF MOTION OF SUBCLASS B REPRESENTATIVES, AND THE OTHER CLAIMANTS, APPELLEES, TO DISMISS APPEAL AND FOR SANCTIONS AND INJUNCTIVE RELIEF and (ii) MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPELLANT WILLIAM LEIGHTON'S APPEAL AND FOR SANCTIONS AND INJUNCTIVE RELIEF, to be served on the following attorneys By Hand:

William Leighton, Esq.
249 West 11th Street
New York, NY 10014

Richard Davis, Esq.
Deborah Deitsch-Perez, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, NY 10153

Rory O. Millson, Esq.
Joanne M. Gentile, Esq.
Cravath, Swaine & Moore
825 Eighth Avenue
New York, NY 10019-7415

Melvyn I. Weiss, Esq.
Milberg Weiss Bershad Specthrie & Lerach
One Pennsylvania Plaza
New York, NY 10119-0165

Daniel R. Murdock, Esq.
Donovan Leisure Newton & Irvine
30 Rockefeller Plaza
New York, NY 10112

Mark A. Belnick, Esq.
Paul Weiss Rifkind
Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019

By Federal Express:

Barry Goldsmith, Esq.
Securities and Exchange Commission
(Stop 4-2)
Washington, D.C. 20549

Theodore N. Miller, Esq.
Sidley & Austin
One First National Plaza
Chicago, IL 60603

Richard V. Sandler, Esq.
Victor & Sandler
844 Moraga Drive
Los Angeles, CA 90049

Deponent is not a party to this action, and is overthe age of 18 years.

s/ Kathleen Felton
KATHLEEN FELTON

EXHIBIT B

LAW OFFICES
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103-6365
Telephone (215) 875-3000
Telecopies (215) 875-4604

August 27, 1992

TO: Subclass B Securities
Litigation Claimants

Re: *In Re The Drexel Burnham Lambert Group Inc., et al.*, 90 Civ. 6954 (MP), Chapter 11 Case No. 90 B 10421 (FGC), Jointly Administered

We are writing to advise you of the status of the above proceedings and to forward to you important documents relating to the treatment of your Subclass B Securities Litigation Claim(s).

By order dated March 9, 1992, the U.S. Bankruptcy Court confirmed the Drexel Debtors' Second Amended and Restated Joint Plan of Reorganization Under Chapter 11 of the U.S. Bankruptcy Code (the "Plan"). The Drexel Debtors have since reorganized and have emerged from Chapter 11 pursuant to their Plan. As a Subclass B claimant, you should have received a copy of the Plan and accompanying Disclosure Statement. These documents provide you with detailed information concerning the Drexel Debtors and the terms of the Drexel Debtors' reorganization.

Among other things, the Plan incorporated the terms of the Securities Litigation Claims Settlement Agreement dated May 3,

1991 (the "Claims Agreement"). As you are aware from our prior communications with you, the Claims Agreement embodies the settlement of your Subclass B Securities Litigation Claim(s) against the Drexel Debtors. Each Subclass B Securities Litigation Claim shall be treated as provided for by the Order Approving Plan of Allocation and Administration of Settlement Fund B for Subclass B Claimants and Plan of Allocation of Drexel Civil Disgorgement Fund for Eligible Group B Claimants dated July 18, 1991 (the "Subclass B Plan"). (A copy of the Subclass B Plan has been previously supplied to you.)

Among other things, the Subclass B Plan provides for the formulation and implementation of guidelines and other procedures by which to evaluate all Subclass B Securities Litigation Claims and to allocate the distributions received by Subclass B in connection therewith. The actual distribution of the settlement fund created for Subclass B is subject to the evaluation and allocation of the Subclass B Securities Litigation Claims, the implementation of the Subclass B Plan and Court approval of same.

In order to effectuate the Subclass B Plan and expedite the evaluation and allocation of Subclass B Securities Litigation Claims in a uniform and consistent manner, each Subclass B Securities Litigation Claim has been placed into a category. The categorization of Subclass B Securities Litigation Claims was based on a number of factors. Notably, this included the grouping of Subclass B Securities Litigation Claimants whose claims arose out of similar factual circumstances, or whose claims were substantially duplicative of the claims of other such Subclass B claimants. Wherever feasible, a Designated Representative has been selected for each such category to undertake to negotiate an evaluation and allocation of the claims in the respective categories. Certain individual claims need no Designated Representative and will negotiate directly their allocation. All of the above is in accord

with the provisions of the Subclass B Plan, and the selection of the Designated Representatives has been approved by order of the U.S. District Court dated August 4, 1992.

For your information and review, the Subclass B Executive Committee is enclosing the following documents relating to the above:

1. Cover Memorandum Concerning Subclass B Claims Resolution;

2. Summary of Subclass B Claim Resolution Guidelines: and

3. Schedule of the Subclass B Category in which your claim has been placed and the Designated Representative thereof.

It is anticipated that the Subclass B Executive Committee and/or your Designated Representative will be in contact with you shortly with respect to your Subclass B claim. In the meantime, please feel free to communicate with the Co-Chairmen of the Subclass B Executive Committee if you have any questions.

Sincerely,

s/ David Berger
David Berger

s/ Stanley Nemser (DB)
Stanley Nemser

Co-Chairmen, Subclass B
Executive Committee

RA-42

Richard Drubel
Steven Goldberg
Stanley Grossman
John Harkins

Members, Subclass B
Executive Committee

LJL:dg
Encls.

RA-43

MISCELLANEOUS SECURITIES TRANSACTIONS CLAIMS

Designated Representative: No Designated Representative (Executive Committee will negotiate with each claimant)

Claimant:

Federal Home Life
Keystone Custodian Fund (various funds)
PHF Life Insurance
Canadian Bank
Citibank
Den Dankse Bank
Lloyds Bank
Cuyahoga Wrecking Corp.
Harvey Lurie
H. Vernon, Estate of
E. Vernon
Phoenix Resources Co., Inc.
William Leighton
Days Inn/Tollman Hundley/Monty D. Hundley/Stanley S. Tollman
McCown De Leewu & Co.
MDV Holdings, Inc.
Van Doren Rubber Co.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No.
92-5042

In re

THE DREXEL BURNHAM LAMBERT GROUP, Inc. et al.

Debtors-Appellees.

WILLIAM LEIGHTON,

Appellant,

SECOND SUPPLEMENTAL AFFIRMATION IN OPPOSITION TO SUBCLASS B REPRESENTATIVES' MOTION TO DISMISS

William Leighton affirms under penalty of perjury :

1. I am the appellant in this appeal and I am respectfully submitting this second supplemental affirmation in opposition to the motion to dismiss filed by the Subclass B representatives, claimants-appellees, on August 13, 1992. The subject matter of this second supplemental Affirmation was not dealt with in my Affirmations of August 14, 1992 and September 1, 1992.

I am submitting this affirmation in order to challenge and correct certain statements made by Stanley Nemser, Esq. in his affidavit sworn to on August 12, 1992 in support of his motion to dismiss this appeal. The motion was heard on September 15, 1992 by a panel of this Court whose questions also focused on Exhibit EE to Mr. Nemser's affidavit.

2. Mr. Nemser was *not* the attorney of record in *Shenkman v. Revlon*, No. 91-7911 in this Court and had nothing to do with that case. Other attorneys not affiliated with Mr. Nemser's law firm were involved and they did *not* serve a notice of entry of Exhibit EE nor did they make a demand for payment. This has resulted in a *waiver,* or a *waiver due to laches* within the meaning of F.R.Civ.P. 8(c).

This could have been due to the fact that the settlement involved in *Revlon* was aborted owing to a change in market conditions for the debentures there involved. Since about January of this year the market price of those debentures has been equal to or in excess of par thus rendering moot the settlement and the distribution contemplated by it.

3. If the *Revlon* settlement had not been aborted it would have been reported in Revlon Inc.'s annual report on Form 10-K for the fiscal year ending December 31, 1991 which was filed with the S.E.C. on March 27, 1992. That report does not mention *Shenkman v. Revlon* as it should have if a distribution to debentureholders had been made.

Mr. Nemser's Exhibit EE clearly shows that the document first came into his possession on June 24, 1992. He used it without disclosing the waiver by the attorneys with standing to raise the matter in this Court. Mr. Nemser should have disclosed in his affidavit whether or not the $12,000,000 *Revlon* settlement has been consummated and whether or not the debentureholders have received their share of that bounty in addition to being enabled to sell their debentures at or about par on the open market.

4. Waiver, or waiver due to laches, as affirmative defenses to an obligation imposed by this Court should be taken into account when disposing of Mr. Nemser's motion.

Respectfully submitted:

s/ William Leighton
William Leighton

Affirmed this 16th day of September, 1992.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

90 Civ. 6954 (MP)

90 B 10421 (FGC)

In re

THE DREXEL BURNHAM LAMBERT GROUP, INC., et al.,

Debtors.

Date: April 10, 1992
2:15 p.m.

BEFORE:

HONORABLE MILTON POLLACK,
District Judge

APPEARANCES:

WILLIAM LEIGHTON
Movant pro se

WEIL GOTHSHAL & GOTHAL
Attorneys for Drexel
PETER R. GRUENBERGER
Of Counsel

BERGER & MONTAGUE
Attorneys for Class of Securities Litigation Claimants and Other Securities Litigation Claimants in Subclass B

DAVID BERGER
DANIEL BERGER
Of Counsel

[2] (Case called)

THE COURT: Mr. Leighton, start by telling me what is new that hasn't been decided previously.

MR. LEIGHTON: I have a memorandum to that effect, your Honor. May I submit it, a reply memorandum to their papers? May I submit that?

THE COURT: You can submit it.

MR. LEIGHTON: This is what is new, your Honor. The appellate court came down with a decision on March 27th, which is four days after this court, your Honor, had signed the order amending the March 9th order. That is what the appellate court did.

As is very clear from the appellate court's decision, its decision is based on the settlement agreement of May 3, 1991. It has nothing to do with the global agreement of March 9th as amended by the order of March 23rd. My position is that constitutes a separate and distinct matter which the appellate court has not addressed. That is number one. Number two, the appellate court has not identified the source of its jurisdiction, which is 158 (d). It has identified only a decision which it had made in the past, the Sonex decision, which says that if there is a discrete dispute –

THE COURT: Get down to cases, will you, Mr. [3] Leighton?

MR. LEIGHTON: That's it.

THE COURT: As far as I can understand your application here, it has been passed on in a variety of ways in several places. You had better start tracing this thing out and show me that you have a legitimate basis for having put everybody to the trouble of reading the motions, or else there will be some consequences here. Start from the beginning and tell me just what you are up to.

MR. LEIGHTON: All I wish, you Honor, is for the former shareholders of Beatrice Companies to be compensated for their loss and for the current shareholders of American Brands to be compensated for their loss, which is running every day at the rate of I don't know how much.

THE COURT: Let me ask you this question. Was there a decision by the Delaware supreme court affirming a decision of the Delaware county court finding that you lacked standing to object in the Beatrice Companies litigation?

MR. LEIGHTON: There was.

THE COURT: What are you doing presenting a claim if you lack standing?

MR. LEIGHTON: Because what the claim under the bankruptcy law is not barred by the claims made in the Delaware courts. What is more, the claim accrued in 1987 —

[4] THE COURT: You purchased your ten shares of Beatrice common stock after the supposed breach of duty?

MR. LEIGHTON: Your Honor, I purchased my shares like thousands of other people, on the New York Stock Exchange on the basis of a prospectus which I have here with me.

THE COURT: Was that after the supposed breach of duty?

MR. LEIGHTON: No. It was before. We are talking about the Beatrice case now, your Honor.

THE COURT: Yes, that is right.

MR. LEIGHTON: It was before. The Beatrice case was settled behind the shareholders' backs without reference to the omissions, the material omissions in the prospectus. I have the prospectus here with me. Thousands of shareholders bought their shares based on that prospectus, and they were deceived.

The Delaware Supreme Court never adverted to the prospectus, and the prospectus was never placed in evidence. That is the factual situation. The Delaware supreme court will not apply federal law, for reasons of its own. I have protested against that. I have taken at this time all the way up to the U.S. Supreme Court, and I have here a copy of the brief which my opponents have filed in the U.S. Supreme Court.

[5] Having lost approximately $86 million as a result of Drexel's financing of the Beatrice takeover, the only thing that we can do right now is to seek relief in this court, in this bankruptcy court. That is the only thing we can do. We cannot recoup the losses any other way.

The statute is very clear. Financing a takeover by means of violations of the March regulations has to be disclosed in the prospectus. That was not disclosed in the prospectus. I have it here. If the Court wishes me to do so, I have shall produce that prospectus in evidence.

The same thing happened again with the American Brands shareholders. We lost real money, approximately $68 million, as a

result of Drexel's financing of the E-2 bonds. There is a judgment that could be entered in another courtroom for $781 million as a result of E-2's purchase of American Brands stock on the open market with borrowed money, again based on the prospectus which was false and misleading. I have that prospectus here.

I would not have filed these proofs of claim if the attorneys representing the class in Delaware had complied with their fiduciary duty of filing that proof of claim. I would not have filed the proof of claim in the American Brands case if other sets of attorneys had not failed to file the proof of claim.

That is the situation. The statute is very [6] clear. The order of November 15, 1990 constituted a bar order, and something had to be done before that date. I did it. The reason why I am proceeding pro se is because I cannot match the resources of my opponents. The resources of my opponents are —

THE COURT: You have proceeded pro se for 25 years, to my knowledge. Don't tell me about being advised by lawyers. You have been your own lawyer for 25 or more years.

MR. LEIGHTON: Your Honor, I cannot find a lawyer who will espouse the cause of the shareholders. We are just at the mercy of the system, which will not permit us to come to court and present our cases. I went before the Second Circuit in the American Brands case, and I just could not persuade the appellate panel that we were not properly represented in that case, adequately represented.

I found out about it several days later. There was no proof of claim filed on behalf of American Brands shareholders, and we stand to lose on a judgment of $781 million. That is why I am here. That is why I have to go up to the appellate court and state our case.

THE COURT: Is that all you have to say?

MR. LEIGHTON: I respectfully call the Court's attention to the statement in Weinberger which says that at a considered and detailed assessment of the reasonableness [7] of proposed settlements of class action must be made.

The global settlement did not receive that attention from this Court. I respectfully claim that it should receive such attention from this Court, and failing that we should go up on appeal. I think the Supreme Court has clearly stated in Marino v. Ortiz that intervention should be granted, should be sought and should be granted when an appeal is to be filed by a nonparty. I did exactly what the Supreme Court said. There is nothing else I can say.

THE COURT: Is intervention mandatory or is it discretionary?

MR. LEIGHTON: That is the issue, your Honor, under the Marino cases. The Supreme Court did not say mandatory and it did not say discretionary. It just said intervene. I have that opinion here if you want to see it, your Honor.

THE COURT: I don't need the opinion. I am familiar with the opinion. I am just asking you for your opinion. You have been knocking around in these cases.

MR. LEIGHTON: I would say, your Honor, that is permissible under 25(b).

THE COURT: Permissible?

MR. LEIGHTON: I would say so.

THE COURT: All right. Mr. Gruenberger, can you [8] make a proper record here, please?

MR. GRUENBERGER: Yes, I can, your Honor. Thank you very much. Peter Gruenberger for the debtors, from Weil Gotshal & Manges.

Mr. Leighton has moved here to intervene, his motion says, for the purpose of appealing the final decision of this Court along with Judge Conrad from the August 9 and August 20 order which approved the class action settlement and certified the class of all securities litigation claimants and so he can appeal, he says, your Honor's March 9 order.

THE COURT: March 9 which year?

MR. GRUENBERGER: 1992, your Honor, last month, which had to do with the global settlement.

I agree with one thing that Mr. Leighton says, that those two orders are independent of each other. That is the only thing with which I do agree, however.

His motion to intervene for purposes of appealing, I think, demonstrates a litigant's nonbelief in the issue of finality and a fundamental misconception about what has been going on in this court, in the bankruptcy court, and in the Court of Appeals. Mr. Leighton has advanced these theories about Beatrice and American Brands and about lawyers and law firms being disqualified for failure to conform to fiduciary standards three times [9] already in in bankruptcy case.

Three times he has lost, same arguments, and three times he has failed to appeal. Now all of his appeal time is gone, and he wants a fourth bite at the apple so he can rehash it again in the Court of Appeals, all of these same rejected arguments, and try to resuscitate his prior defaults in appealing.

Don't let him do it, your Honor. He cites Marino v. Ortiz. You asked a correct question, whether it is permissive. That's true. Another correct would be does it apply to him at all? It doesn't. The Supreme Court there said that this principle applies on intervention only to someone who is not a party to the underlying case, that you had to become a party in order to appeal, and in that case appeal from a settlement, and you could not collaterally attack it if you didn't become a party.

That case has nothing to do with Mr. Leighton. He is and has always been a party to these Drexel bankruptcies from day one. He filed two proofs of claim and thereby submitted himself to the jurisdiction of the bankruptcy court and this court when your Honor made your reference. He was made a member of subclass B of the securities litigation claimants. They have always been parties to this litigation cases.

I am astounded that he would try to turn this [10] motion to intervene of his into part of the allocation process within that subclass B by trying to reargue for the fourth time the merits or lack thereof of his underlying claims. That doesn't belong in this hearing today.

He has been a party and he was a party on August 9 when he filed his objections, which are almost a carbon copy of the objections that he files here today, in then opposing class certification and the securities settlement. He appeared at that August 9 hearing in person, made his arguments. Your Honor overruled them expressly. That was the first time he lost.

He failed to appeal, although three other objectors whom your Honor overruled on that day on August 9 did file appeals. Mr. Leighton tries to justify his failure to appeal by saying that he filed a 1292(b) motion with your Honor. He said he did it because he viewed the August 9 order and the August 20 decision, findings of

facts, and conclusions of law based on the August 9 order as merely an interlocutory order and not appealable. Well, I believe that too, but the Second Circuit said I was wrong. The Second Circuit said it was an appealable order, and it so held on March 27th. Therefore, Mr. Leighton is also wrong.

The second time he objected on these very same grounds that he raises today was at the confirmation hearing on March 5, 1992, before Judge Conrad in the bankruptcy [11] court. There, still as a party to the bankruptcy cases and as a creditor who had received notice of the confirmation, Mr. Leighton objected in writing and again made an oral argument. His papers don't tell you that, but he appeared on March 5 and made his objection. Judge Conrad expressly overruled that objection, which was again based on the same things he has in here, not all but in part. Mr. Leighton failed to appeal that order. And now his time has run.

As your Honor knows, there have been a few appeals filed. Some have been dropped, some haven't. But he is now barred from raising these arguments.

He does raise one ground that is new. That is his objection to the release and injunction provisions in the plan of reorganization. He could have raised that where he should have raised it, before Judge Conrad, but he didn't. He failed to do that. Other parties tried to do that, including the Bank of Yugoslavia and others which your Honor is familiar with. Judge Conrad overruled those objections. The release and injunction provisions are in the plan. Now he is barred from trying to reargue that again today. He has waived them. It is too late.

Even if he were allowed, somehow, I can't conceive of it, but somehow to intervene in this case, a case he is already in, what good would it do him? The Second Circuit has already ruled, in its March 27, 1992 [12] affirmance, that the release and injunction

provisions to which he objects are valid. Thus, his belated objection has already been ruled upon by a court.

Mr. Leighton has a new argument that I didn't see even in his reply brief that somehow the Court of Appeals doesn't have jurisdiction because it didn't cite Section 158(d) of the judicial code. But Mr. Leighton knows, because he was there when I argued it, that the court's only jurisdiction is under 158(d). It is in our briefs to the Second Circuit, your Honor has seen those, and that is he only jurisdiction it could have acted on. So that argument, I don't even know where it comes from.

Finally, we come to the March 9 hearing of 1992 in this court. Mr. Leighton misperceives what that was all about. He says the Weinberger decision somehow impacts that hearing. It doesn't. That wasn't a hearing on a class action notice the way the August 9 hearing was. It was something totally different.

The hearing was on the global settlement and who was an identified settling party. That test comes under the plan. The plan said you only get the benefit of the injunction if you are an identified settling party. Your Honor had to determine whether the potential identified settling parties had provided such material benefits to the estate and to its reorganization as to be worthy of [13] receiving the benefits of release and injunction. It had nothing at all to do with whether or not the release and injunction was good or bad. Judge Conrad had already determined that on March 5 in the confirmation hearing, the hearing in which Mr. Leighton participated and refused, or failed at least, to object to the release and injunctions.

I don't understand any basis of his position. He can't bootstrap himself by the Marino case, for the reasons I stated, and he has waived everything else. I just don't think your Honor should permit him — I don't know how to stop him after 25 years of this. I

don't know what we can do. But this is not a hearing, nor should he have another chance, to belittle law firms, to say everybody is disqualified, to everyone in the world violated his rights. Enough is enough, and we have to stop him.

Your Honor, every time I come down, with all respect, to argue on a miscellaneous motion, it costs the estate money. Legitimate creditors, whether they are on the fixed creditors side or the securities litigation side, are going to have to pay for that time that Mr. Leighton is wasting.

Your Honor, I think his motion should be denied, and I think unless he stops, Rule 11 sanctions ought to be applied.

MR. DAVID BERGER: If it please your Honor, David [14] Berger on behalf of subclass B.

I would call your Honor's attention for the record that Mr. Nemser, who could not be here today, has filed an affidavit. In paragraph 13 of his affidavit, he has distinctly pointed out that Mr. Leighton, who comes here before your Honor to appear as a white knight for the shareholders of Beatrice and American Brands, has, in fact and in law, been conclusively determined not to have purchased the stock at the appropriate time. He bought it after the alleged wrong occurred. He has no standing.

How then, I ask rhetorically, can he be the white knight for these alleged wrongs?

I would say to your Honor that in addition to his affidavit, Mr. Nemser has attached the entire opinions of the Delaware supreme court, one relating to Beatrice. That decision, your Honor, came down on October 16, 1987. It is attached to Mr. Nemser's affidavit.

In paragraph 12 of the order of the Supreme Court of

Delaware, not only was Mr. Leighton's position exposed as having no merit whatsoever and he having no standing, in addition to that the court said that he should be assessed special costs and expenses. Indeed, with respect to American Brands, your Honor, the court again explicitly held that he had no standing.

So for him to come in here and ask your Honor, in [15] the exercise of your Honor's discretion, permissibly to grant him a right to intervene, it seems to me, is absolutely frivolous, and I respectfully request that your Honor should dismiss his motion.

THE COURT: Anything else?

MR. LEIGHTON: Your Honor, what the Delaware supreme court is doing is upsetting the entire federal securities law scheme.

Here is the prospectus —

THE COURT: Did you ever tell them that?

MR. LEIGHTON: I did.

THE COURT: What did they say to you?

MR. LEIGHTON: They just looked the other way. I also told them that they are not following the Constitution, which says that they have to respect the federal securities law scheme. Again, they looked the other way.

What they are saying is that —

THE COURT: Is there anything that they did down there in Delaware that you think is right?

MR. LEIGHTON: No.

THE COURT: Everything, every ruling that Delaware made is entirely wrong and a violation of federal rights, is that it?

MR. LEIGHTON: That is what Judge Motley said in the case which I am citing. She said so. She was faced with a settlement in Pope v. Good which was argued as res [16] judicata by the defendants in Pope v. Good. And that was decided by the Delaware supreme court. Judge Motley specifically ruled that the Pope v. Good does not affect the rights of seagoing uniform. I cited that in my brief, in my reply brief today. If Judge Motley is wrong or you differ with her, I hope that you will say so on the record.

There is another case where the Delaware supreme court was ignored by the federal courts, and that is the Lindy case. The Lindy case in the Third Circuit was decided on a different basis than the Lindy case before the Delaware supreme court because there was a difference of opinion as to the standard applicable to settlements in federal court and that in the Delaware supreme court.

If you read the Lindy case, your Honor, that will give you one of the reasons why you should not be overly impressed with what is happening in Delaware. You are sitting here as a judge of e United States to sustain the laws of the United States.

This prospectus, on the basis of which I bought my stock, was effective at the time. They never looked at it. They refused to look at it. And what do we have today? We have a bankruptcy. I didn't create the bankruptcy. The bankruptcy had to come because of what the Delaware supreme [17] court did in the Beatrice case. That is one of them.

There are other cases which I am not going to cite because there are other attorneys who are far more capable of arguing RJR Nabisco, also settled in Delaware, and many others.

So if you do have a bankruptcy today, your Honor, it is because it was created in Delaware.

Thank you very much.

THE COURT: Is that all? All right. Decision reserved.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

90 Civ. 6954 (MP)

Chapter 11 Case No. 90 B 10421 (FGC)

In re
THE DREXEL BURNHAM LAMBERT GROUP, INC. et al.

Debtors,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

88 Civ. 6209 (MP)

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DREXEL BURNHAM LAMBERT INCORPORATED, THE DREXEL BURNHAM LAMBERT GROUP, INCORPORATED, et al.

Defendants.

AFFIDAVIT OF STANLEY NEMSER IN SUPPORT OF PROPOSED SETTLEMENT OF SECURITIES LITIGATIONS CLAIMS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

STANLEY NEMSER, being duly sworn, deposes and says:

1. I am a member of Wolf Popper Ross Wolf & Jones. David Berger, of Berger & Montague, P.C., and I are Lead/Liaison Counsel in the class and shareholder trading actions in *In re Ivan F. Boesky Securities Litigation*, M21-45 (MP), MDL Dkt. No. 732 (S.D.N.Y.) ("*Boesky Securities Litigation*"). We are also two of the four counsel for the Class of Securities Litigation Claimants and counsel for Subclass B thereof in the above-referenced Bankruptcy proceedings. A Firm Description of Wolf Popper and a brief legal biography of myself is annexed as *Exhibit A*.

2. I submit this affidavit in support of the fairness, reasonableness and adequacy of the proposed settlement ("Settlement") set forth in the Securities Litigation Claims Settlement Agreement dated May 3, 1991 (the "Claims Agreement). This affidavit is submitted to supplement the separate affidavit of David Berger in support of the proposed settlement in order to respond to certain aspects of filed objections to the Settlement. The Court is also respectfully referred to the Memorandum of Law in Support of Application for Approval of Securities Litigation Claims Settlement, filed on behalf of the settling Securities Litigation Claimants, and the Debtors' Memorandum of Law in Support of Fairness, Reasonableness and Adequacy of Proposed Class Settlement of Securities Litigation Claims Against Debtors.

3. Five separate objections have been submitted in opposition to the Settlement effected on behalf of the Securities Litigation Claimants and Subclass B thereof. Those objections have been filed by (i) William Leighton; (ii) Liggett Group, Inc. and Liquid Green Trust ("Liggett-Liquid Green"); (iii) Citibank, N.A., Den Danske Bank, Lloyds Bank plc and Canadian Imperial Bank of Commerce ("Citibank"); (iv) the four class representatives of Class VI in the *Boesky Securities Litigation* ("Class VI Plaintiffs"); and (v) HongkongBank London Limited.*

I. William Leighton

4. William Leighton is not new to the judicial system. He has been found by other courts to be a habitual *pro se* litigant who makes baseless claims and violates court orders. *See Leighton v. One William Street Fund, Inc.*, 345 F.2d 565, 567 (2d Cir. 1965) (affirming orders of the District Court directing security for costs to be paid by Leighton, stating that "the risk of abuse [was] manifest [as] Leighton had purchased his ten shares only one month before he commenced his efforts to take part in shareholder litigation."; *Leighton v. Paramount Pictures Corp.*, 340 F.2d 859 (2d Cir. 1965) (noting that Leighton was "an habitual *pro se* litigant whose claims were often conclusory and lacking in legal merit" and that Leighton was in contempt of orders of the District Court); *In re Union Carbide Corp. Securities Litigation*, 718 F. Supp. 1099, 1108 (S.D.N.Y. 1989) (holding that Leighton was not a class member and had no standing to object to supplement of class action; *Leighton v. Goodman*, 311 F. Supp. 1181 (S.D.N.Y. 1970) (Judge Mansfield finding that Leighton had filed an earlier action wherein the same issue had already been adjudicated adversely to him and that he had filed a patently insufficient claim); *Kerner v. Crossman*, 211 F. Supp. 397 (S.D.N.Y. 1962) (finding that it appeared that Leighton had acquired his shares purely for the purpose of appearing and contesting the settlement and that his objections were totally without merit. *See also Dubowski v. Colonial Penn Group, Inc.*, slip op., docket No. M-18-302 (SMK) (S.D.N.Y. August 22, 1984) (where the Court imposed sanctions on Leighton, described his arguments as "preposterous," and stated that it "cannot and will not tolerate the continued practice by Leighton of filing frivolous motions, flouting orders . . . and frustrating proper litigants' rights to obtain satisfaction on their claims and judgments.").

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* I have recently been advised that the objection filed by individual plaintiffs asserting Pacific Lumber claims in the *Boesky Securities Litigation* has been withdrawn.

5. At least one court has entered a permanent injunction against Leighton. In *Conaway v. Davis*, slip op., No. 10535-76 (Sup. Ct. N.Y. Co. May 2, 1988) (Altman, J.), Leighton was restrained from making any further motions or applications where the class action had been settled and approved in 1985; Leighton's motion to intervene had been denied in January, 1986 because he was not a member of the plaintiff class; the orders approving the settlement and denying intervention were affirmed and, in the words of the Court, the "case concluded years ago and the litigation should end."

6. Here, Leighton makes various conclusory objections to the Claims Agreement that appear primarily directed to criticisms of the SEC's oversight of Drexel, and the conduct of counsel for the Class of Securities Litigation Claimants. In fact, Leighton appears to have no objection to the Claims Agreement itself. Moreover, Leighton's same objections to the conduct of counsel have already been considered and dismissed by multiple courts.

7. Leighton states, *inter alia*, that Berger & Montague and Wolf Popper should be disqualified from representing the Class of Securities Litigation Claimants and Subclass B because (he argues) they negotiated an inadequate settlement of *In re Beatrice Companies, Inc. Litigation*, No. 8248, Delaware Chancery Court, New Castle County, concerning the takeover of the Beatrice Companies, Inc. by Kohlberg Kravis & Roberts & Co.. However, in that litigation the Chancery Court held that the settlement was fair, reasonable, and adequate. *See* opinion of the Chancery Court dated April 16, 1986. That opinion was affirmed by the Delaware Supreme Court in a opinion dated February 20, 1987, finding that Leighton had purchased his Beatrice common stock after the defendants' alleged breach of duty and after dissemination of the allegedly unlawful proxy. The Court wrote: "Under settled Delaware law, an objector who purchases a claim by buying stock after the alleged wrongdoing has occurred lacks standing to challenge the wrongdoing in a derivative capacity."

8. In three separate orders dated April 25, 1986, June 23, 1987,* and July 6, 1987, the Delaware Chancery Court rejected Leighton's efforts to reargue its April 16, 1986 determination. On October 16, 1987, the Delaware Supreme Court dismissed Leighton's appeal from the June 23, 1987 order, emphasizing again that "Leighton lacks the fundamental standing prerequisites to present objections to the settlement at issue."

9. The Supreme Court of Delaware surcharged Leighton for costs and attorneys' fees. *See* Order of the Delaware Supreme Court dated September 7, 1990.

10. Leighton has on three separate occasions unsuccessfully sought review of the *Beatrice* settlement in the United States Supreme Court. *See* 108 S. Ct. 233 (1987) *(cert. denied);* 108 S. Ct. 474 (rehearing denied); 111 S. Ct. 1020 *(cert. denied).*

11. Thus, it has been judicially determined that the settlement in that action was fair, reasonable, and adequate and that Leighton has no standing to allege otherwise. (Copies of the pertinent opinions of the Delaware Chancery Court and Supreme Court are annexed hereto as *Exhibit B*).

12. Leighton's other generalized claims of conflicts of interest, leveled at other counsel as well, regarding litigation concerning E-II Holdings, Inc., American Brands, Inc., and RJR Nabisco, Inc. are equally without merit. Moreover, the Delaware Court of Chancery and Supreme Court have both held that Leighton lacks standing to challenge American Brand's

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* In its opinion dated June 23, 1987, the Chancery Court added: "Mr. Leighton has, under Delaware law, no standing to litigate any aspect of this matter having acquired his interest in Beatrice with knowledge (or at least notice) of the transactions about which he seeks to complain."

acquisition of E-II Holdings, Inc. because he acquired his ten shares of American Brands after American Brands announced its tender offer for E-II Holdings' common stock on January 21, 1988. *See In re American Brands Shareholders Litigation*, slip op., Civil Action Nos. 9586, 9616 (Del. Ch. September 13, 1988) (available on Westlaw); *Leighton v. Lewis*, slip op., Appeal No. 471, 1988 (Sup. Ct. Del. May 25, 1990) (available on Westlaw) (referring to "Leighton's lengthy history of frivolous litigation"). (Annexed as *Exhibit C*.)

13. In fact, it is evident that Leighton's two Proofs of Claim filed in these Bankruptcy Proceedings (Nos. 6532 and 6557), and objections to the Claims Agreement, merely seek to reargue the same issues conclusively settled in the *Beatrice* and *American Brands* action, in which it was also determined that Leighton had no standing to object.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

90 Civ. 6954(MP)

Chapter 11 Case
No. 90 B 10421 (FGC)
Jointly Administered

In re

THE DREXEL BURNHAM LAMBERT GROUP INC., et al.

Debtors.

AFFIDAVIT OF RICHARD J. DAVIS

Richard J. Davis, being duly sworn, deposes and says:

1. I am a partner in the law firm of Weil, Gotshal & Manges, counsel for The Drexel Burnham Lambert Group Inc. and its nineteen subsidiaries and affiliates which are the debtors in the above captioned proceedings (referred to herein collectively as the "Debtors" or "Drexel"). I submit this affidavit in support of (a) the proposed settlement by Drexel with certain individuals and entities (the "Settling Participants") listed in Exhibit A to this affidavit (the "Global Settlement") and (b) the designation of such individuals and entities as "Identified Settling Parties" within the meaning of the Debtors' First Amended and Restated Joint Plan of Reorganization (or any modification thereof) (the "Plan") — *i.e.*, those persons and entities whose settlement with the Pool Administrators provides material benefits to the Debtors' estates and to consummation of the Plan.

A. The Settlement Process

2. The Global Settlement has been the subject of extremely

intense negotiations for the past five months. The goal of these negotiations was to determine whether it was possible to settle at one time all pending and potential claims by Drexel against Michael Milken, approximately two hundred former members of Drexel's High Yield and Corporate Finance Departments and various partnerships and entities with which these individuals were affiliated, as well as all pending and potential claims by third parties against these individuals and entities ("Third Party Claims").

3. A fundamental premise of the negotiations and of the Global Settlement itself was that the claims being settled had not been proved at trial, and that their resolution would involve many years of costly litigation trying to resolve complex and difficult issues. The Settling Participants continue to deny liability for these claims and, absent the Global Settlement, it was recognized that courts all over the country would have to deal with endless litigation.

4. The District Court closely monitored these negotiations and, at the request of the District Court, Weil, Gotshal & Manges served in the role of mediator, seeking to keep the negotiations moving forward. The Settling Participants[1] and the Claimants were each separately represented in these settlement discussions through liaison counsel who coordinated with their various constituencies. The principal negotiators on behalf of the Settling Participants were counsel for Michael Milken (Paul Weiss Rifkind Wharton & Garrison; Stephen Kaufman; Richard Sandler) and the counsel for various settling partnerships in which the settling individuals participated (Sidley & Austin; Donovan & Leisure). The principal negotiators for the claimants were the Pooling Counsel (Cravath, Swaine & Moore; Milberg, Weiss, Bershad,

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1. Capitalized terms are defined in the Plan or in the Global Settlement Stipulation.

Specthrie & Lerach), who under the Plan are responsible for pursuing the claims of Drexel against the Settling Participants together with those of the Federal Deposit Insurance Corporation, the Resolution Trust Company and thirteen class actions where Milberg, Weiss is lead counsel, and the law firms of Berger & Montague and Wolf, Popper, Ross, Wolf & Jones, who served as the liaison to counsel in other pending cases.

B. The Nature of the Settlement

5. Under the terms of the Global Settlement Stipulation, approximately $1.3 billion in consideration will be made available for distribution to the claimants. This includes $500 million in new payments by Michael Milken, the consent by Michael Milken to the release of over $400 million in the SEC Fund created in his settlement with the SEC, $300 million from the Settling Participants other than Michael Milken (the "Other Settling Participants") through payments by the settling partnerships, and at least $100 million from various insurance proceeds.[2]

6. The $500 million in payments by Michael Milken are to be made under a payment schedule which requires payments to be made as soon as possible and creates various specific deadlines by which defined amounts must be paid. The first payment — on the Effective Date[3] — can be no less than $200 million and the last payment is due no later than December 31, 1995. Mr. Milken will

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2. Because of the critical role played in these negotiations by the insurance carriers providing directors and officers liability insurance, to the extent of the relevant policies these carriers also are proposed as Identified Settling Parties, provided that definitive documentation of agreements with them is submitted to the District Court by May 4, 1992.

3. The Effective Date is when all conditions have been satisfied and is expected to occur in October, 1993.

sign a promissory note for the full $500 million (thus putting at risk all of his assets). In addition, by May 4, 1992, he formally will pledge 100 percent of his interests in the so-called Drexel Securities Partnerships and $150 million in cash as security for his settlement obligations.

7. The $300 million to be paid by the approximately 200 Other Settling Participants will be paid from their interests in the Settling Partnerships without recourse to the settling individuals. These amounts are to be paid as soon as possible with no less than $150 million being due on the Effective Date and the remainder being due one year later. By May 4, 1992, the interests of the Other Settling Participants in the Drexel Securities Partnerships formally will be pledged as security for these obligations.

8. While Michael Milken and the Other Settling Participants will be able to sell the pledged assets in order to fulfill their settlement obligations, the process of selling these securities will be under the overall supervision of a judicially appointed monitor. Among other things, the responsibilities of the monitor include making certain that these securities are sold as soon as is reasonably practicable, consistent, however, with the goal of realizing the inherent value of the assets.

9. In addition, with limited exceptions, all Settling Participants must release their claims against Drexel.

10. In consideration for making these payments, the Settling Participants are receiving various protections against pending and potential claims, including those afforded pursuant to the release and injunction provisions (Sections 12.2 and 12.3) of the Plan. The initial protection is that the Global Settlement contemplates that all claimants with pending actions against the Settling Participants will sign the Global Settlement Stipulation. This includes the recently filed class action on behalf of all persons or entities who

have not previously filed actions which seeks damages from the Settling Participants for all Drexel Related Claims. In addition:

a. All of the claimants will provide judgment reduction protection to the Settling Participants;

b. An indemnity for any unresolved claims, including any opt outs from the new class action, of up to $50 million will be provided by the Settlement Fund to the Settling Participants; and

c. The Settling Participants will retain certain rights to terminate the settlement if, prior to the Effective Date, they determine that their realistic exposure to ongoing claims is in excess of the amounts available under the indemnity.

C. Benefits to the Estate

11. The Global Settlement will provide enormous benefits to the Debtors' Estate. These include:

a. Pursuant to the pooling arrangement in the Plan, Drexel's Fixed Creditors will receive more than $84 million (less any expenses which under the terms of the Plan may be deducted);

b. More than $600 million in claims already filed against Drexel are being released;

c. Potentially significant contribution and

indemnity claims filed against Drexel are being released;

d. Claims against settling partnerships in which Drexel has an interest are being released, which will remove a significant obstacle to Drexel realizing on its interest in those partnerships, which has a value of over $200 million;

e. Implementation of the Employee ERISA Compensation Claims settlement, which is an integral part of the Plan, is facilitated by the release by Michael and Lowell Milken of their Class 6 Claims; and

f. By settling Drexel litigations involving bonuses, partnership investments by former employees and claims against Michael Milken, significant time-consuming burdens will be removed from employees of the Trust being created under the Plan.

D. Drexel Claims Being Settled

12. As discussed above, in connection with the Global Settlement, Drexel is releasing claims against the Settling Participants. Under the Plan, these claims were included in a pool with claims of the FDIC, the RTC, and the Milberg, Weiss Actions. Fourteen percent of recoveries on these Pooled Claims (excluding any amounts payable from the Michael Milken SEC Fund) will be distributed to Drexel's Fixed Creditors and eighty-six percent of these recoveries will be distributed to the other Drexel creditors in this pooling arrangement.

13. The principal Drexel claims which are being released under the Global Settlement are:

a. Claims against Michael Milken — In the pending case filed by Drexel, it is seeking in excess of Sl billion in damages. This claim, of course, is being sharply contested and, at the time this litigation was stayed pending these discussions, in excess of [40] depositions remained to be taken. Mr. Milken also filed hundreds of millions of dollars of counterclaims in this action.

b. Bonus Claims — Cases asserting bonus and other compensation payments made by Drexel in 1989, involving approximately $192 million, are pending against the Settling Participants. These claims are also being contested and the principal issues involved in their resolution would revolve around if and when Drexel Burnham Lambert Incorporated, the broker-dealer, became insolvent, the extent to which such payments were made and received in the ordinary course of business, and the extent to which the recipients were "insiders" as defined in the Bankruptcy Code.

c. Corporate Opportunity Claims — These claims involve the contention that investments made by the Settling Participants in various settling partnerships were diverted from Drexel. These claims are also being contested. Among the issues in pursuing these claims are whether the approval by the Chairman of the Board and the Chief Executive Officer of

Drexel of a significant number of these investments was sufficient to authorize them and the extent to which these investments deviated from what was authorized. In addition, various other claimants have asserted that the equity interests which are the subject of these claims by Drexel belonged neither to the employees nor to Drexel, but instead belonged to purchasers of related securities.

Conclusion

14. In sum, the benefits to Drexel from the Global Settlement are extraordinary and likely will produce in excess of $1 billion in value. Weighed against the extraordinary uncertainty of litigation, which could last for years at enormous expense, the Global Settlement clearly provides very material benefits to Drexel.

s/ Richard J. Davis
Richard J. Davis

Sworn to before me this
5th day of March, 1992.

s/ Gerald Fadian
Notary Public

William Leighton
249 West 11th Street
New York, N.Y. 10014
(212) 255-0001

May 8, 1992

Request for Exclusion from the Global Class Action
Presidential Life Insurance Company v. Michael R. Milken, et al.
("Presidential"), 92 Civ. 1151 (MP)

David Berger, Esq.
Stanley Nemser, Esq.
Arthur I. Liman, Esq.
Daniel R. Murdock, Esq.
Theodore N. Miller, Esq.

Gentlemen:

In accordance with the printed Notice dated April 22, 1992, the undersigned hereby requests that he be excluded from the Global Class in this action. Since the Notice recites your preference (at para. 29) that the reasons for the exclusion request be stated, the following points should be noted:

1. Substantially all the members of the plaintiff Class (that has been certified for settlement purposes only) in this consent action are also Drexel's creditors in *In re Drexel etc.*, 90 Civ. 6954 (MP), hereinafter "the Drexel bankruptcy".

2. Substantially all the defendants in this consent action are Identified Settling Parties in the Drexel bankruptcy, supra.

3. The defendants in this consent action are seeking to enjoin the class members from pursuing their rights on appeal from the final

decision in the Drexel bankruptcy, Since Drexel, a nonparty to this action, is paying for the cost of publishing and disseminating the Notice (see para. 10 of the Order of March 11, 1992 herein) it follows that Drexel should have been made a party hereto. These facts have not been disclosed in the Notice. In September, 1989, Drexel was convicted on four counts of securities fraud and two counts of mail fraud, see copy of Judgment No. 89, 2303, S.D.N.Y., attached. Thus, it looks as if the defendants who worked for or at Drexel during the period of time covered by the indictment are now seeking releases from and injunctions against the plaintiff class.

4. The Drexel bankruptcy case is now on appeal by the undersigned. On that appeal the pendency of this consent action and its subject matter will be an issue. No useful purpose would be served by the participation of the undersigned in two related litigations seeking opposite results with respect to the same issues. For these reasons the undersigned hereby opts out of the certified Class on behalf of himself and the shareholder classes for whose benefit Claims Nos. 6557 and 6532 are pending in the Drexel bankruptcy.

The undersigned has failed Claim No. 6557 in the Drexel bankruptcy for and on behalf of himself and all other former shareholders of Beatrice Companies, Inc. similarly situated. This claim is for $86,187,500 and is for Drexel's and the defendants' unjust enrichment at the expense of Beatrice shareholders. The claim should have been, but was not, filed and prosecuted by the law firm of Wolf Popper Ross & Jones which, in 1985 and 1986, represent a certain class of Beatrice shareholders in related litigation in Delaware.

The undersigned has also filed Claim No. 6532 in the Drexel bankruptcy for and on behalf of himself and all other present shareholders of American Brands, Inc. similarly situated. This claim is for $54,375,000 with respect to Drexel's and the

defendants' unjust enrichment at the expense of American Brands shareholders. The claim should have been, but was not, filed and prosecuted by the law firm of Berger & Montague which, in 1988, represented a certain class of American Brands shareholders in related litigation in Delaware.

Please acknowledge receipt of this request.

Yours truly,

s/ William Leighton
William Leighton

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

92 Civ. 1151 MP

PRESIDENTIAL LIFE INSURANCE COMPANY,

Plaintiff,

v.

MICHAEL R. MILKEN, et al.,

Defendants.

July 14, 1992
10:09 am

* * *

MR. LEIGHTON. Yes, your Honor. I really step up only to take 60 seconds of the court's time.

THE COURT: State your name.

MR. LEIGHTON: William Leighon, 249 West 11th, New York City, 10014.

THE COURT: Are you under some kind of an order of the Court of Appeals to make payment of compensation under Rule 11 that was imposed on you by the Court of Appeals or some other judge?

MR. LEIGHTON: Not me, not your Honor.

* * *

[35] THE COURT: Or was it your wife, which?

MR. LEIGHTON: Yes.

THE COURT: Your wife was?

MR. LEIGHTON: The only reason I stepped up for 60 seconds is to request that the record should show I have opted out of this proceeding. I talked to Mr. Berger this morning, he has a list of the opt outs, my name did not appear there, so I just want to make sure that it does. There is nothing else.

THE COURT: You're opted out.

MR. BERGER: Thank you. I told Mr. Leighton that we would amend any list and his name would be included as an opt out.

William Leighton
249 West 11th Street
New York, N.Y. 10014
(212) 255-0001

December 12, 1992

Thomas D. Barr, Esq.
Melvyn I. Weiss, Esq.
Ira M. Millstein, Esq.
Barry R. Goldsmith, Esq.
David Berger, Esq.
Stanley Nemser, Esq.

Re: William Leighton, Petitioner etc. v. the Drexel Burnham Lambert Group, et al. Respondents

Gentlemen:

Three copies of a petition for certiorari in the above case were mailed to you on December 11. Due to a regrettable inadvertence, postage was not affixed on the envelopes. It could be that, in the discretion of your postmaster, your envelope would be delivered to you on a "Postage due" basis. If you agree to pay the requested postage, I shall reimburse you for your expense.

The due date of the petition for certiorari is December 16, 1992. Should you not receive your copies by that time, you have my consent to an extension of time for the filing of your answer within thirty days after receipt of your copies of the petition. However, if you have received your copies, please notify the Clerk, U.S. Supreme Court, Washington, D.C. 20543 to that effect, copy to me. Your cooperation is appreciated and the inconvenience caused you is regretted.

Sincerely,

s/ William Leighton
William Leighton

cc: Clerk
U.S. Supreme Court

William Leighton
249 West 11th Street
New York, N.Y. 10014
(212) 255-0001

December 17, 1992

Thomas D. Barr, Esq.
Melvyn I. Weiss, Esq.
Ira M. Millstein, Esq.
Barry R. Goldsmith, Esq.
David Berger, Esq.
Stanley Nemser, Esq.

Re: William Leighton, Petitioner etc. v. the Drexel Burnham Lambert Group, et al. Respondents

Gentlemen:

On December 16, 1992, the due date of the petition for certiorari in the above case, I have mailed to you three copies of the petition.

Accordingly, if you have received three additional copies under the circumstances described in my letter of December 12, 1992 to you, I would appreciate it if you would return to me three copies of the petition and I shall reimburse to you your postage costs.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

s/ William Leighton
William Leighton

William Leighton
249 West 11th Street
New York, N.Y. 10014
(212) 255-0001

January 28, 1993

Thomas D. Barr, Esq.
Melvyn I. Weiss, Esq.
Ira M. Millstein, Esq.
Barry R. Goldsmith, Esq.
David Berger, Esq.
Stanley Nemser, Esq.

Re: William Leighton Petitioner, v. The Drexel Burnham Lambert Group, Inc. et al. No. 92-1219, October Term, 1992, U.S.Supreme Court

Gentlemen:

At the request of the Clerk of the U.S. Supreme Court, the covers of the petition for certiorari, three copies of which were served on you on December 16, 1992 have been changed. A copy of the changed cover is attached.

An error has appeared on line 12 of page 33 of the petition. The name "Lester" should be substituted for "Leon". The error is regretted.

Yours truly,

s/ William Leighton
William Leighton

SUPREME COURT OF THE UNITED STATES

No. 92-1219

William Leighton

Petitioner

vs.

The Drexel Burnham Lambert Group, Inc.

Respondent

To *Stanley Nemser, Esq.* Counsel for Respondent:

YOU ARE HEREBY NOTIFIED pursuant to Rule 12.1 that a petition for a writ of certiorari in the above-entitled and numbered case was filed in the Supreme Court of the United States on the ____ day of ____, 19 ____.

At the request of the Clerk of the Supreme Court, we are sending you herewith an appearance form which needs to be completed and sent to the Clerk by counsel who will represent yur clients ONLY IN THE EVENT NO PLEADING IN THE CASE IS FILED BY YOUR CLIENT. Your attention is directed to Rule 9 of the Rules of the Supreme Court reproduced on this form.

Only counsel of record will receive notification of the Court's action in this case.

RA-85

NO. 92

IN THE

Supreme Court of the United States

October Term, 1992

WILLIAM LEIGHTON,

Petitioner,

versus

THE DREXEL BURNHAM LAMBERT GROUP, INC.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WILLIAM LEIGHTON
Petitioner
249 West 11th Street
New York, N.Y. 10014
(212) 255-0001

December, 1992

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

90 Civ. 6954 (MP)
Chapter 11
Case No. 90 B 10421 (FGC)
Jointly Administered

ORDER NO. *53*

IN RE

THE DREXEL BURNHAM LAMBERT GROUP, INC. ET AL.,
Debtors.

Counsel for Subclass B Representatives and the Subclass B Executive Committee having moved herein for an order (i) disallowing William Leighton's ("Leighton") Proof of Claim No. 6532 to the extent filed on behalf of all persons who purchased shares of the common stock of Beatrice Companies, Inc. ("Beatrice") before April 17, 1986, the Effective Time of the merger of Beatrice into BCI Holdings Corporation, a Delaware corporation and (ii) disallowing William Leighton's Proof of Claim No. 6557 to the extent filed on behalf of all persons similarly situated to Leighton as a shareholder of record of American Brands, Inc., a Delaware corporation ("American Brands"), and this Court having considered all of the papers submitted on this motion and having heard the parties thereon, and upon all proceedings heretofore had herein; and upon due deliberation, it is hereby

ORDERED, that the Proof of Claim No. 6532 filed herein by Leighton, on behalf of himself as a former shareholder of Beatrice and on behalf of all persons who purchased shares of the common stock of Beatrice before April 17, 1986, the Effective Time of the

merger of Beatrice into BCI Holdings Corporation, a Delaware corporation, is hereby disallowed to the extent filed on behalf of the said class; and it is further

ORDERED, that the Proof of Claim No. 6557 filed herein by Leighton on behalf of himself as a shareholder of record of American Brands and on behalf of all persons similarly situated, is hereby disallowed to the extent filed on behalf of the said class, and it is further

ORDERED, that for all purposes hereinafter the said two Proofs of Claim shall be deemed filed solely on behalf of Leighton.

Dated: November 12th, 1992
New York, New York

s/ Milton Pollack
Senior United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

92 Civ. 1151 (MP)

ORDER NO. *14*

PRESIDENTIAL LIFE INSURANCE COMPANY,

Plaintiff,

-against-

MICHAEL R. MILKEN, et al.,

Defendants.

Plaintiff having moved herein for an order striking William Leighton's ("Leighton") Request for Exclusion to he extent filed by Leighton (i) on behalf of all persons who purchased shares of the common stock of Beatrice Companies, Inc. ("Beatrice") before April 17, 1986, the Effective Time of the merger of Beatrice into BCI Holdings Corporation, a Delaware corporation and (ii) on behalf of all persons similarly situated to Leighton as a shareholder of record of American Brands, Inc., a Delaware corporation ("American Brands"); and this Court by Order No. 8 herein, dated August 3, 1992 having amended Paragraph 46 of this Court's Findings of Fact and Conclusions of Law, dated July 17, 1992 ("Findings"), and ordering Paragraph 4 of this Court's Order and Final Judgment of Dismissal of Global Class Action, Including Permanent Injunctions, dated July 17, 1992 ("Final Judgment"), by, *inter alia,* an exception whereby the Court may limit by further order of the Court any or all of the requests for exclusion; and this Court having considered all of the papers submitted in support of and in opposition to this motion and having heard oral argument thereon, and upon all proceedings heretofore had herein; and upon due deliberation thereon, it is hereby

ORDERED, that the Request for Exclusion filed herein by Leighton seeking exclusion on behalf of himself as a former shareholder of Beatrice and on behalf of all persons who purchased shares of the common stock of Beatrice before April 17, 1986, the Effective Time of the merger of Beatrice into BCI Holdings Corporation, a Delaware corporation, is hereby stricken to the extent filed on behalf of the said class; and it is further

ORDERED, that the Request for Exclusion filed herein by Leighton seeking exclusion on behalf of himself as a shareholder of record of America Brands and on behalf of all persons similarly situated is hereby stricken to the extent filed on behalf of the said class; and it is further

ORDERED, that for all purposes hereinafter the Request for Exclusion shall be limited solely as Leighton's individual request to be excluded from the Global Class herein; and Schedule D attached to the Findings; Paragraph 46 of the Findings, and paragraph 4 of the Final Judgment and hereby deemed amended to provide for said limitation pursuant to the said Order No. 8 of this Court dated August 3, 1992, and it is further

ORDERED, that except for the aforesaid limitation imposed by this Order on the Request for Exclusion filed by Leighton, Schedule D attached to the Findings, the Findings, and the Final Judgment shall remain in full force and effect for all purposes herein, including without limitation the finality for purposes of appeal as provided in ordering paragraph 13 of the Final Judgment.

Dated: November 12, 1992
New York, New York

s/ Milton Pollack
Senior United States District Judge

UNITED STATES SUPREME COURT DETERMINATIONS
PETITIONS AND MOTIONS (WILLIAM LEIGHTON *PRO SE*)

1. *William Leighton v. Beatrice Companies, Inc.*, 111 S. Ct. 1020, 112 L.Ed.2d 1101, 59 U.S.L.W. 3503, 59 U.S.L.W. 3550, 59 U.S.L.W. 3564 (U.S. Del., Feb. 19, 1991) (NO. 90-1101) - the motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. Petition for writ of certiorari to the Supreme Court of Delaware denied.

2. *William Leighton v. Uniroyal, Inc.*, 484 U.S. 964, 108 S. Ct. 454, 98 L.Ed.2d 394 (U.S.N.J., Nov. 30, 1987) (NO. 87-556) - Petition for writ of certiorari to the Superior Court of New Jersey, Appellate Division. Denied.

3. *William Leighton v. Beatrice Companies, Inc.*, 484 U.S 971, 108 S. Ct. 474, 98 L.Ed.2d 412 (U.S. Del., Nov. 30, 1987) (NO. 87-304) - The petition for rehearing is denied.

4. *William Leighton v. Beatrice Companies, Inc.*, 484 U.S 898, 108 S.Ct. 233, 98 L.Ed.2d 192 (U.S. Del., Oct. 13, 1987) (NO. 87-304) - Petition for writ of certiorari to the Supreme Court of Delaware. Denied.

5. *William Leighton v. Dubowski*, 466 U.S. 947, 104 S.Ct 2146, 80 L.Ed.2d 533 (U.S., Apr. 23, 1984) - The motion of respondent Dubowski to direct the Clerk not to file the petition for writ of certiorari is denied. The request to impose sanctions is denied.

6. *William Leighton v. Dubowski*, 465 U.S. 1016, 104 S.Ct. 1263, 79 L.Ed.2d 671 (U.S., Feb. 21, 1984) (NO. A-552) - The application for stay addressed to THE CHIEF JUSTICE and referred to the Court is denied.

7. *William Leighton v. One William Street Fund, Inc.*, 400 U.S. 1006, 91 S.Ct. 562, 27 L.Ed.2d 619 (U.S., Jan. 18, 1971 (NO. 1112, OCTOBER TERM, 1968) - Motion for leave to file second petition for rehearing denied.

8. *William Leighton v. One William Street Fund, Inc.*, 395 U.S. 942, 89 S.Ct. 1994, 23 L.Ed.2d 460 (U.S., Jun. 02, 1969 (NO. 1112) - Petition for rehearing denied.

9. *William Leighton v. One William Street Fund, Inc.*, 394 U.S. 988, 89 S.Ct. 1467, 22 L.Ed.2d 762 (U.S., Apr. 21, 1969) (NO. 1112) - Motion of petitioner to require certification of additional portions of appendix granted. Petition for writ of certiorari to United States Court of Appeals for Second Circuit denied.

10. *William Leighton v. Pararmount Pictures Corporation*, 381 U.S. 925, 85 S.Ct. 1560, 14 L.Ed.2d 683 (U.S., May 24, 1965) (NO. 1045) - Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit. Denied.

11. *William Leighton v. Paramount Pictures Corporation*, 377 U.S. 919, 84 S.Ct. 1181, 12 L.Ed. 2d 187 (U.S., Apr. 27, 1964) (NO. 908) - The motion to dispense with printing the petition for writ of certiorari is granted. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit and for other relief denied.

12. *William Leighton v. One William Street Fund, Inc.*, 373 U.S. 937, 83 S.Ct. 1539, 10 L.Ed.2d 692 (U.S., May 27, 1963 (NO. 999) - The motion to dispense with printing the petition for writ of certiorari is granted. Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

13. *William Leighton v. Securities and Exchange Commission*, 365 U.S. 888, 81 S.Ct. 1042, 6 L.Ed.2d 198 (U.S., Apr. 17, 1961) (NO. 867, MISC) - Petition for writ for certiorari to the United States Court of Appeals for the Second Circuit. Denied.

14. *William Leighton v. Rogers*, 359 U.S. 650, 79 S.Ct. 650, 3 L.Ed.2d 636 (U.S., Mar. 09, 1959) (NO. 668) - The motion to use the record in No. 348, October Term, 1957, *Societe Internationale, etc. v. Rogers*, 357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255, is granted. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit denied.

15. *William Leighton v. Securities and Exchange Commission*, 350 U.S. 905, 76 S.Ct. 176, 100 L.Ed. 794 (U.S., Nov. 21, 1955) (NO. 106) - Petition for rehearing denied.

16. *William Leighton v. Securities and Exchange Commission*, 350 U.S. 825, 76 S.Ct. 54, 100 L.Ed. 737 (U.S., Oct. 10, 1955) (NO. 106) - Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. Denied.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

89 Civ. 6728
(TPG)

JAMIE L. SHENKMAN, LYNDA SHENKMAN CURTIS, EDITH KANE, LAURA GOLDBERG MOORE, ROSALIE A. GOLDBERG, individually and as Trustee under trust agreement dated October 30, 1972 for the benefit of Barry A. Shenkman, ROSALIE A. GOLDBERG and BARRY A. SHENKMAN as Trustees of Charitable Lead Trust No. 1 under trust agreement dated July 29, 1987, and INDIVIDUAL RETIREMENT ACCOUNT for the Benefit of Jamie L. Shenkman,

Plaintiffs,

-against-

REVLON, INC., REVLON GROUP INCORPORATED, MACANDREWS & FORBES HOLDINGS, INC., RONALD O. PERELMAN, PIERRE A. RINFRET, JEWEL S. LAFONTANT, FRED R. SULLIVAN, BRUCE SLOVIN, AND HOWARD GITTIS,

Defendants.

AFFIDAVIT OF EDWARD LABATON

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EDWARD LABATON, being duly sworn, deposes and says:

1. I am a member of Goodkind, Labaton & Rudoff, co-

counsel for the plaintiffs in this action. I make this affidavit in opposition to the motion of Yvette M.G. Leighton to intervene in this action.

2. As shown in plaintiffs' accompanying memorandum of law, Mrs. Leighton is not entitled to intervene of right under Fed. R. Civ. P. 24(a). She is therefore limited to permissive intervention under Fed. R. Civ. P. 24(b).

3. Under Fed. R. Civ. Proc. 24(b), in determining whether to permit a person to intervene in an action, the court is to "consider whether the intervention will unduly delay or prejudice the adjudication of the rights of original parties." As shown below, Mrs. Leighton and her husband William Leighton have a long history of delaying and prejudicing the adjudication of the rights of class action parties through frivolous, obstructionist litigation. Accordingly, the Court should, in its discretion under Fed. R. Civ. Proc. 24(b), deny Mrs. Leighton permission to intervene.

4. Although Mrs. Leighton's Revlon, Inc. ("Revlon") 11.75% Senior Subordinated Notes due 1995 (the "Notes") are held in her name and she claims to be acting *pro se*, it is clear that in this motion to intervene she is represented by her husband, William Leighton. Mrs. Leighton notes in her motion papers that "[i]n the preparation and submission of this motion, applicant has been assisted by her husband." When contacted on the telephone by plaintiffs' counsel with regard to the most perfunctory of matters, namely adjourning the return date for this motion, Mrs. Leighton immediately put her husband on the telephone. On August 2, 1989, at a settlement conference before Judge Sand in the prior Noteholder action [*In re Revlon Securities Litigation*, 85 Civ. 1921 (LBS)], Mr.. Leighton, although not a member of any bar, appeared alone on behalf of his wife. Thus, it is evident that Mr. Leighton would be representing Mrs. Leighton in her would-be intervention, and it is appropriate to examine his litigation history in assessing whether Mrs. Leighton's proposed intervention would prejudice the rights of the existing parties.

Mr. Leighton's Long History of Frivolous, Obstructionist Litigation

5. Mr. Leighton's tactics have become legendary, prompting one Court in 1988 to "permanently enjoin Leighton from making any further motions or applications in [that] action." *Conway v. Davis*, No. 10535-76 (Sup. Ct. N.Y. Co. May 2, 1988) *See*. Pigott Aff. Exh. A.[1]

6. Contempt citations and sanctions against Leighton for repeatedly asserting frivolous claims and flouting court orders have almost become commonplace. As another court has recently stated:

> This Court cannot, and will not, tolerate the continued practice of Leighton of filing frivolous motions, flouting orders . . . and frustrating proper litigants' rights . . . . *Dubowski v. Colonial Penn Group, Inc.*, M-18-302 (S.D.N.Y. August 22, 1984), Slip. Op. at 4.

See Pigott Aff. Exh. B.

7. Twenty-four years ago, the Second Circuit recognized "Leighton [as] an habitual *pro se* litigant whose claims [are] often conclusory and lacking in legal merit." *Leighton v. Paramount Pictures Corporation*, 340 F.2d 859, 861 (2d Cir.), cert denied, 381 U.S. 925 (1965). Since then, Leighton has continued to engage in frivolous litigation that has taxed the judicial system and greatly injured the parties.

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1 The slip options and other documents cited herein have been reproduced as exhibits to the accompanying affidavit of James Robert Pigott, Jr., sworn to on July 5, 1990.

8. Leighton, in his deposition taken in *In re American Brands, Inc. Derivative Litigation*, Cons. Civ. Nos. 9586, 9616 (Del. Ch. 1988) ("*American Brands*"), described the nature of his many interventions in class actions and derivative actions:

(i) When asked at his deposition how many times he has objected to class or derivative settlements, he responded, "As many times as I could" (Pigott Aff. Exh. C., p. 94), even though he has never succeeded on his objections or appeals. *Id.* at pages 97, 99.) In many actions he has objected to settlements where he had no financial stake at all. In those situations, (where he had seen a copy of the notice) he petitioned to appear as *amicus curiae* (*see, e.g.*, Pigott Aff. Exh. D at pages 158, 161, 166-167).

(ii) He has exhibited a disregard for the very persons he has supposedly sought to protect. For example, in an action involving Uniroyal, Inc., he offered to drop his appeal if plaintiffs counsel would pay $25,000 to cover his time and expenses. Pigott Aff. Exh. C at pages 100-104.) Significantly Leighton made no attempt to secure compensation for the corporation and its shareholders whose interests he purported to protect. And, when he did not obtain the consideration he sought, Leighton refused to drop his appeal, which was ultimately dismissed.

9. The Delaware Chancery Court in *American Brands* denied Mr. Leighton's application in intervention and overruled his objections to the settlement. The Supreme Court of Delaware on May 25, 1990 summarily dismissed his appeal (*see* Pigott Aff. Exh. F) and, on June 13, 1990, denied his application to seek a rehearing (*see* Pigott Aff. Exh. G).

10. I am aware of Leighton's activities in at least 23 lawsuits (excluding the instant one) involving corporate and/or securities matters.[2] In none of those actions was Leighton's claim found to be meritorious. In several of the actions, he has been held in contempt of Court, has been criticized for lacking standing and acquiring his shares to pursue his claims, and/or has been assessed costs resulting from pressing his frivolous claims. Moreover, Leighton has rarely been satisfied with the trial court's decision and consistently has sought to reargue and to vacate adverse orders.

11. In *Kerner v. Crossman*, 211 F. Supp. 397 (S.D.N.Y. 1961), one of the first reported decisions[3] involving Leighton, the action had already been tentatively settled, subject to the Court's approval, and notice of the settlement had been mailed to the shareholders of the subject company, when Leighton acquired 20 shares of the company's stock. In ruling on Leighton's objections to the settlement, the Courts stated:

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2. Leighton has apparently also prosecuted other claims found to be lacking in merit. *See Leighton v. Goodman*, 311 F. Supp. 1181 (S.D.N.Y. 1970). And at his deposition in *American Brands*, Leighton testified that he has unsuccessfully challenged banking regulations on at least four separate actions. (Pigott Aff. Exh. D., pages 179-181).

3. The earliest reported decision is apparently *Leighton v. Securities and Exchange Commission*, 211 F.2d 91 (D.C. Cir 1955), where Leighton sought to challenge the Securities and Exchange Commission's refusal to regulate the issuance of American Express travelers checks. Leighton claimed that travelers checks were actually securities. The United States Court of Appeals for the District of Columbia granted the SEC's motion to dismiss the complaint.

> It would appear that [Leighton] acquired his shares . . . purely for the purpose of appearing and contesting the settlement. Despite this, the Court has considered his objections and finds them *totally without merit.*

Id. at 401 (emphasis added).

12. In *Rosenfeld v. Richardson*, [1962 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 91,176 (S.D.N.Y. September 19, 1962), Leighton's motion to intervene to oppose the settlement was denied. There, Leighton had admitted that he was not a stockholder at the time of the transactions complained. The Court held that since he was not a stockholder at the time of the lawsuit. "he had no legal rights which could be affected." ¶ 91,176 at 93,876. The Court held that if he wanted to pursue his claims, Leighton should file his own action. He subsequently did, but the District Court required him to post security, which he refused to do. He appealed, and in *Leighton v. The One William Street Fund*, 343 F.2d 565, 567 (2d Cir. 1965), the Second Circuit affirmed, stating that "the risk of abuse is manifest (Leighton purchased his ten shares only one month before he commenced his efforts to take part in shareholder litigation)."

13. Simultaneously with his pursuit of his claims in the *One William Street* litigation, Leighton filed a derivative action on behalf of Paramount Pictures Corporation. *Leighton v. Paramount*, 340 F.2d 859 (2d Cir.), *cert. denied*, 381 U.S. 925 (1965). Like *One William Street*, the *Paramount* action was commenced *pro se* in the Southern District of New York. As in *One William Street*, Leighton appealed the decision to the Second Circuit. And, as in *One William Street*, the Second Circuit criticized Leighton for his abusive tactics. For example, the Second Circuit agreed that Leighton "disobeyed the express mandate" of the District Court, which ordered a stay of all proceedings in the action until Leighton posted

security. In doing so, the Second Circuit upheld the District Court's contempt citation against Leighton. *Paramount*, 340 F.2d at 861.

14. Leighton's propensity for repetitive, frivolous litigation was illustrated in *Conway v. Davis*. No. 10535-76 (Sup. Ct. N.Y. Co.) and *Dubowski v. Colonial Penn Group, Inc.*, CV 80-3411 (E.D.N.Y.). In *Conway v. Davis*, the Court approved a settlement of a class action. The Court overruled Leighton's objections because he lacked standing to assert any claims therein. Leighton simply refused to accept that determination. (*See, e.g.*, 127 A.D.2d 531, 511 N.Y.S.2d 788 (1st Dep't, *appeal dismissed*, 70 N.Y.2d 667, 518 N.Y.S.2d 959 (1987)) (appeal from the denial of Leighton's motion to intervene "unanimously dismissed . . . for lack of standing.") An attorney for one of the parties submitted an affidavit in which he stated:

> Mr. Leighton apparently lives in a Wonderland of Mirrors, in which the same frivolous application can bounce back and forth forever. He has been denied leave to appeal the Appellate Division's decision of February 24, 1987 no fewer than *five* times, twice by [the New York Court of Appeals] (motion for leave to appeal, motion for reargument) and three times by the Appellate Division (motion for leave to appeal, motion to vacate, motion to correct the order).
>
> The constraints that normally inhibit such frivolous practice seem not to affect Mr. Leighton.

Affidavit of Jeffrey C. Slade, Esq., dated January 9, 1988 *See* Pigott Aff. Exh. H.

15. In fact, Leighton conceded that in *Conway* he relitigated the same issues repeatedly. Thus, he admitted at his deposition in the *American Brands* litigation that his motion to intervene in *Conway* had been denied (Pigott Aff. Exh. D., pages 170-171), that he appealed and the Appellate Division affirmed (Pigott Aff. Exh. D., page 172), that the Appellate Division assessed costs in the amount of $75, which he did not pay (Pigott Aff. Exh. D., pages 173-174), that in 1987 he appealed to the highest Court in New York, where he lost, but appealed on the same grounds all over again (Pigott Aff. exh. D., pages 173-174). As noted above, it was in *Conway* that the Supreme Court of the State of New York entered an Order enjoining Leighton from filing any more papers.

Colonial Penn

16. In *Dubowski v. Colonial Penn Group, Inc.*, No. 83-7963 (2d Cir. Jan. 4, 1984) (*see* Pigott Aff. Exh. I) ("*Colonial Penn*"), Leighton sought to intervene and object to the proposed settlement. Once again, Leighton had no standing to object — he bought his 10 Colonial Penn shares fully 1-1/2 years *after* the class period had ended. In fact, his purchase actually was made after the proposed notice of settlement was mailed to class members.

17. The District Court denied Leighton's motion to intervene and approved the settlement. Eleven days later, Leighton moved to vacate the judgment and sought again to intervene and object to the settlement. Once again, the District Court denied the motion, and, because Leighton's claims were "essentially frivolous," the Court assessed costs against him in the amount of $1,500. *Dubowski v. Colonial Penn*, CV 80-3411 (E.D.N.Y. Nov. 15, 1983).

18. Leighton then raised the same frivolous claims in the Second Circuit. In the decision filed January 4, 1984, the Court

granted appellees'[4] motion to dismiss the appeal, holding that "[t]he appeal [was] plainly frivolous." *Dubowski v. Colonial Penn*, No. 83-79563 (2d Cir. Jan 4, 1984) (Pigott Aff. Exh. I). The Court agreed that Leighton lacked standing and criticized his papers in opposition to the motion for failing to even assert standing. Finally, it agreed with the District Court that Leighton's motion to vacate was "vexatious." *Id.* The Second Circuit granted double costs of $3,000 to appellees in addition to the $1,500 imposed by the District Court, and held that Leighton's failure to pay the costs promptly would "subject Leighton to the risk of additional sanctions for contempt." *Id.* The Court also instructed the Clerk of the Court "not to file any papers from Leighton" until a satisfaction of damages was filed. *Id.*

19. Leighton then sought to petition the United States Supreme Court for certiorari. His efforts to have the Supreme Court review his objections failed. (Attached as Exhibit B to the Pigott Aff. is an Order and Judgment of Judge Kram dated August 22, 1984, which outlines the history of Leighton's failed efforts before the Supreme Court.)

20. Moreover, when plaintiffs obtained their $4,500 judgment against Leighton, he attempted to file an appeal therefrom, but his filing was refused. He then — unsuccessfully — sought to file another petition for certiorari (*see* Order and Judgment of Judge Kram, annexed as Exhibit B to the Pigott Aff.). When plaintiffs sought to obtain discovery from a bank in order to determine whether assets existed to satisfy the judgment, Leighton tried to quash the subpoena. In her ruling on that motion, Judge Kram awarded additional costs of $750 to the plaintiffs and stated:

> This Court cannot, and will not, tolerate the continued practice by Leighton of filing

4 Appellees were the plaintiffs and defendants in *Colonial Penn*.

> frivolous motions, flouting orders of this Court and of the Second Circuit, and frustrating proper litigants' right to obtain satisfaction on their claims and judgments. *Dubowski v. Colonial Penn*, M-18-302, slip op. at 4 (S.D.N.Y. Aug. 22, 1984) (Pigott Aff. Exh. B).

21. Leighton thereafter sought to appeal Judge Kram's Order. On the appeal, plaintiffs asked the Second Circuit to punish Leighton for contempt of its Order dated January 4, 1984, for his failure and refusal to pay costs. Finally in late December, 1984 and more than a year after costs were first assessed against Leighton; he paid the $4,500 in costs assessed against him.

The Beatrice Litigation

22. In *In re Beatrice Companies, Inc. Litigation*, Del. Supr. 533 A.2d 1254 (1987) (a copy of the unpublished Order of October 16, 1987 is annexed as Exh. J to the Pigott Aff.), the Delaware Supreme Court, after hearing Leighton's totally meritless claims for the *second* time, (a) affirmed that Leighton's positions were "frivolous," (b) repeated the fact that Leighton lacked "the fundamental standing prerequisites" to present his claims, and (c) assessed *special* costs against Leighton after he sought to relitigate the same unmeritorious claims time and time again.[5]

23. *Beatrice* provides a highly instructive example of the effect of Leighton's involvement in a class action suit. In *Beatrice*,

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5 In *Beatrice*, Leighton burdened the judicial system at least *seven* times: His initial objection to the settlement in the Delaware Chancery Court; his appeal to the Delaware Supreme Court; then a petition for *certiorari* to the United States Supreme Court and a petition for rehearing in that Court; followed by his Rule 60(b) Motion in the Delaware Chancery Court; a motion for reargument; and the appeal to the Delaware Supreme Court leading to its Order of October 16, 1987.

Leighton objected to the proposed settlement of the action. However, Leighton lacked standing to obtain the relief requested. As he had done many times before, Leighton purchased his shares of Beatrice stock well after the transactions sued upon, and indeed, after he reviewed public information concerning the terms of the proposed settlement. In the first ruling upon Leighton's appeals, the Delaware Supreme Court sharply criticized one of Leighton's most frequent procedural moves:

> Under settled Delaware law, an objector who purchases a claim by buying stock *after the alleged wrongdoing* has occurred lacks standing to challenge the wrongdoing in a derivative capacity. See 8 Del. Ch., 76 A.2d 121, 123 (1950). Section 327 provides that a plaintiff cannot maintain a derivative action challenging corporate mismanagement unless he was a stockholder at the time of the transaction complained of or had his stock devolve upon him by operation of law. 8 Del. C., § 327. The purpose of this section is to prevent potential plaintiffs from purchasing stock in order to maintain a derivative action attacking a transaction which occurred prior to the purchase of the stock. Schreiber v. Bryan, Del. Ch., 396 A.2d 512, 516 (1978), Jones v. Taylor, Del. Ch., 348 A.2d 188, 191 (1975) Newkirk, supra.

In re Beatrice Companies, Inc. Litigation, Del Supr., 522 A.2d 865 (1986), *cert. denied*, __ U.S. __, 108 S. Ct. 233 (1987). *See* Pigott Aff. Exh. K. for the unpublished Order of February 20, 1987.

24. As described in the Delaware Supreme Court's Order of October 16, 1987, after the Delaware Chancery Court's initial

approval of the settlement, and the Delaware Supreme Court's affirmance thereof, Leighton filed a motion to vacate the Chancery Court's decision, which motion was denied. Almost immediately thereafter. Leighton moved for reargument of the denial of his motion to vacate. That was followed by an appeal to the Delaware Supreme Court which led to its Order of October 16, 1987. Along the way, Leighton persisted in his efforts all the way to the United States Supreme Court. *See Leighton v. Beatrice Companies, Inc.*, __ U.S. __, 108 S. Ct. 233 (1987), which denied Leighton's petition for rehearing.

25. The class members in *Beatrice* were deprived of $5,000,000 in cash from the settlement for more than a year while Leighton pressed his groundless claims, causing needless expense to the parties and the Courts. In fact, the Delaware Supreme Court ruled that appellees were entitled to a "special order assessing costs in addition to those provided for in Supreme Court Rule 20(b)"

26. Leighton has persisted notwithstanding the strong warnings of the Courts over the 25-year period. In *Paine, Webber, Jackson & Curtis, Inc. v. Merrill Lynch, Pierce, Fenner & Smith*, 564 F. Supp. 1358 (D. Del. 1983), Leighton, acting *pro se*, sought to join the case as a third-party plaintiff, following defendant's commencement of a third-party action. The Court held that even if Leighton's request were treated as a motion to intervene, he had failed to show that he satisfied the requirements for intervention. 564 F. Supp. at 1371-73. In *Montezuma Realty Corp. v. Occidental Petroleum Corp.*, No. CV-74-1-RMT (C.D. Cal.) (Pigott Aff. Exh. D., pages 150-151, 155) and in *Caleb & Co. v. E. I. DuPont de Nemours*, 84 Civ. 4075 (S.D.N.Y. November 24, 1986) (Pigott Aff. Exh. L.), the Court approved settlements over Leighton's objections.

27. In *Pogostin v. Leighton* ("*Uniroyal*"), 216 N.J. Super.

363, 523 A.2d 1078 (Sup. Ct. App. Div.), *cert denied*, __ U.S. __, 108 S.Ct. 454 (1987), Leighton objected to the proposed settlement of an action involving the rights of shareholders of Uniroyal, Inc. The trial court approved the settlement and Leighton, acting *pro se*, appealed. Once again, Leighton was found to lack standing because he purchased his 5 shares of Uniroyal stock six months *after* the date certified for determining eligibility as a class member, and more than one month after the parties reached the settlement and notice of the settlement was mailed to shareholders. 523 A.2d at 1080-81.[6] The appellate court held that not only did Leighton lack standing, but that "*all* of the issues of law raised [by Leighton] . . . are clearly without merit." 523 A.2d at 1082, 1085. (Emphasis added.)

28. In another series of recent actions, Leighton petitioned various courts to appear as *amicus curiae* in order to object to proposed settlements in shareholder litigations. In each of those cases, he had no financial stake at all in the dispute and he was found to lack standing to object (Pigott Aff. Exh. D., pages 158, 161, 166-167). Thus, in *In re Cincinnati Gas & Electric Co. Securities Litigation*, Master File No. C-I-82-1721 (S.D. Ohio 1986), the Court held:

> Mr. Leighton, having read a short form of notice in the Wall Street Journal concerning this case, sent the Court a letter in which he essentially requests leave to file an *amicus curiae* brief. By his own admission, he is not a member of the class, nor does he indicate that he even is a shareholder of CG&E stock . . . . [W]e hereby deny him leave . . . and overrule any objections he may be raising.

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6 As described above, it was in that action that Leighton demanded $25,000 for his "time" and "expenses" as a precondition for dropping his meritless appeal.

Order and Judgment dated January 2, 1986. (See Pigott Aff. Exh. M).

29. In *Fine v. Houston Ill Trust*, C.A. No. H-82-551 (S.D. Texas 1986), the Court approved the settlement of a shareholder litigation over the objections of Leighton. The Court found that Leighton did not demonstrate that he was a class member, and therefore, the Court overruled Leighton's objections as "meritless and frivolous." *See* Final Judgment of Dismissal, entered December 16, 1986, at p. 3, annexed as Exhibit N to the Pigott Aff; *see also* Pigott Aff. Exh. D., page 182; Pigott Aff. Exh. E, pages 236-238. The identical tactics were also rejected by the Courts for the same reasons in *In re American Savings & Loan Shareholder Litigation*, No. 85-0659-CIV-SCOTT (S.D. Fla. 1987) (Final Order and Judgment, at p. 4, Pigott Aff. Exh. O.; Pigott Aff. Exh. E., pages 271-272); *Spring v. Continental Illinois Corporation*, No 84 C 4648 (N.D. Ill. 1987) (Final Order and Judgment, entered January 29, 1987, at p. 3, Pigott Aff. Exh. P.; Pigott Aff. Exh. E., pages 264-265); and *In re Seafirst Litigations*, Civil No. C830771R (W.D. Wash. 1987) (Final Judgment of Dismissal with Prejudice entered March 24 1987 at p. 5, Pigott Aff. Q.).

30. Leighton's *amicus* attempts were also rejected in *Wechsler v. Torotel, Inc.*, No. 85-1074-CV-W-6 (W.D. Mo., December 30, 1986) (Pigott Aff. Exh. D, page 158); *In re North American Philips Corp. Stockholders' Litigation*, Del. Ch., C.A. 9178 (Pigott Aff. Exh. D., page 161); *Jacobsen v. Metromedia, Inc.*, No. 28432/87 (Sup. Ct. N.Y. Co.) (Pigott Aff. Exh. E., pages 226, 234-235); *In re WICAT Securities Litigation*, Civil No. C-83-1117G (D.C. Utah) (Pigott Aff. Exh. E., pages 249-251); *Stoller v. Baldwin United Corp.*, No. C-1-82-1438 (S.D. Ohio) (Pigott Aff. Exh. E., pages 253-254); and *Klein v. A.G. Becker Paribas, Inc.*, 83 Civ. 6456 (S.D.N.Y.) (Pigott Aff. Exh. E., pages 259-260).

CONCLUSION

31. As discussed in the accompanying memorandum of law, Mrs. Leighton's interests are more than adequately represented by the existing parties. She has not alleged, nor could she establish, any of the conditions required for intervention of right under Rule 24(a). And, as the facts allege herein overwhelmingly demonstrate, Mrs. Leighton's intervention would greatly delay and prejudice the adjudication of the rights of the existing parties. The Court, therefore, should exercise its discretion under Rule 24(b) to deny Mrs. Leighton permission to intervene in this action.

s/ Edward Labaton
EDWARD LABATON

Sworn to before me this
5th day of July, 1990

s/ Janice R. Silver
Notary Public